

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(I) CRM-M-15400-2020 (O&M)

Sham Lal @ Sharma @ Shama ...Petitioner

Versus

State of Punjab ...Respondent

(II) CRM-M-21394-2020 (O&M)

Sahil Malhotra @ Sahil Sharma ...Petitioner

Versus

State of Punjab ...Respondent

Date of Decision: 08.03.2022

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Veneet Sharma, Advocate, for the petitioner
in CRM-M-15400-2020.

Mr. Karanjit Singh, Advocate, for the petitioner
in CRM-M-21394-2020.

Mr. M.S.Dullat, Addl. AG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. This order shall dispose of aforesaid two petitions filed on behalf of Sham Lal @ Sharma @ Shama and Sahil Malhotra @ Sahil Sharma, seeking grant of regular bail in respect of a case registered against them vide FIR No.17 dated 23.01.2020 at Police Station City Tarn Taran, District Tarn Taran, under Sections 21/29 of the NDPS Act.
2. As per the case of the prosecution, on 23.01.2020, when a police party was present in the area of Police Station City Tarn Taran in connection with patrolling, two young persons were seen sitting by the side of the road, who

were exchanging something from a polythene bag and who upon noticing the police party got frightened and started running towards fields leaving the polythene bags at the said place. The said persons were apprehended by the police and who upon inquiry disclosed their names as Sham Lal @ Shama and Sahil Malhotra. The search of the polythene bags led to recovery of 353 grams and 303 grams of *heroin* respectively.

3. Learned counsel for the petitioners have submitted that they have falsely been implicated in the present case and in fact they had been picked up from the street i.e. Khajoor Wali Gali, Amritsar, outside their houses by police officials, who had come in plain clothes on the morning of 23.01.2020 at about 8.13 AM. It has further been submitted that the said incident also stands captured in CCTV camera installed in a shop in the same locality. Learned counsel have further submitted that the said CCTV footage has been got examined from the Directorate of Forensic Science, Gujarat State, Gandhinagar, wherein it has been reported that although the CCTV footages recorded in the CD-R had not been retrieved from the hard disk of DVR concerned, but continuity had been observed in the CCTV footage.
4. On the other hand, learned State counsel has submitted that since in the report dated 11.11.2020 (Annexure R-1), it has been clearly opined by the Scientific Officer, Directorate of Forensic Science -cum- Assistant Chemical Examiner, Gandhinagar that the CCTV footage produced by the accused had not been retrieved from the hard disk of the DVR concerned, the contention raised on behalf of the petitioners regarding their false implication falls to ground and that no authenticity can be attached to the CCTV footage being relied upon by the petitioners and that as such, the

petitioners having been found in possession of 'commercial quantity' of contraband do not deserve the concession of bail.

5. I have considered rival submissions addressed before this Court.
6. It is apposite to refer to order dated 22.07.2020 passed in *Sham Lal's* case, which reads as follows:

"The case has been taken up for hearing through video-conferencing.

Petitioner seeks grant of regular bail in case bearing FIR No.17 dated 23.01.2020 registered under Sections 21, 29 of the NDPS Act at Police Station City Tarn Taran, District Tarn Taran.

Petitioner has made pointed allegations against the policemen who had come in plain clothes in the morning of 23.01.2020 at 8:13 am in front of the house of the petitioner in a private vehicle and picked up the petitioner. The incident has been captured in CCTV camera installed in the market. The FIR in question came to be registered on 23.01.2020 itself at 3:45 pm. The alleged occurrence took place on 3:25 pm.

According to the learned counsel for the petitioner, the petitioner has already submitted compact disk (CD) to the police. On 15.07.2020, this Court has observed that the reply by way of affidavit of DSP Sh. Sucha Singh, PPS does not correspond to the averments made in para No.3 of the petition. The contention of the learned counsel for the petitioner is that the CD would show a different version in respect of arrest of the petitioner, then what had been shown in the FIR. The affidavit filed by the aforesaid DSP was found to be wanting on the aforesaid parameters and it was directed that a supplementary affidavit be filed by the officer, explaining the circumstances in which the petitioner had been picked up on earlier occasion of the day as per compact disk.

In compliance of the order dated 15.07.2020, a supplementary affidavit of DSP Sh. Sucha Singh PPS dated 21.07.2020 has been filed. Para No.3 of the affidavit if compared with the stand taken by the officer in para No.2 of the affidavit, would show that the genuineness of the alleged CCTV camera footage has been outrightly denied without subjecting the same to some expert. The officer has alleged that the CCTV camera footage relied by the petitioner seems to be manipulated. For ready reference, para No.3 of the petition is also reproduced hereunder:-

“3) *That in fact the petitioner was picked up from a street next to his house i.e. Khajoor Wali Gali, Amritsar by policemen in plane cloths on the morning of 23.01.2020 at 8:13 am and the entire incident has been captured in a CCTV camera installed in the market. In the CCTV camera footage it is evident that the police officials came in a private vehicle and picked up the petitioner and took him in their car. In the CCTV camera footage and in some of the photographs, the petitioner is in red trousers and it is evident that he has been picked up by the police and later on implicated in the present case by foisting the recovery upon the petitioner at some village in Tarn Taran. The photographs are annexed herewith as Annexure P-2 and the compact disk (CD) is annexed herewith as Annexure P-3.*”

Having considered the submissions made by learned counsel for the parties, I deem it appropriate to direct the police/Investigating Officer of the case to get the compact disk analyzed by some expert in the field. The police would also obtain concerned DVR from the person who has installed CCTV in the market. Police would also disclose the name of the person from whom the CD has been obtained, before submitting the same to the police. The entire exercise shall be done by the police within reasonable time.

Till the next date of hearing, petitioner is directed to be released on interim bail subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the concerned Illaqa Magistrate/Duty Magistrate.

For further consideration, adjourned to 02.09.2020.”

7. In compliance of the aforesaid order dated 22.07.2020, the State filed its reply dated 09.01.2021, wherein it was mentioned that the CCTV footage is being sent to CFSL, Gandhi Nagar, Gujarat, where DVR testing facility is available.
8. As per the latest reply filed on behalf of the State i.e. by way of affidavit dated 11.01.2022, the report of FSL, Gandhinagar, Gujarat has been

received. The relevant extract from the said report annexed as Annexure R-1 reads as follows:

“Observations and Opinions:

1. File format, Date / Time & Camera Stamp and Visuals of the CCTV Video footage present in the DVD-R Exh-B and CCTV Video footages retrieved from the Hard disk Exh-HA of the DVR Exh-A, which reveals that the CCTV Video footage present in the CD-R Exh-B is not derived from the Hard Disk Exh-HA of DVR Exh-A.
 2. Continuity was observed within the CCTV Video footage present in the CD-R Exh-B, no sign of edit / alteration was observed within in this CCTV Video footage.
 3. Blank USB Pen drive Mark-B1 was returned in as such condition.”
9. Before proceeding further, the contents of para 8 of the said affidavit also need to be borne in mind, which are to the following effect:
- “8. That it is respectfully submitted that Smt. N.H.Adalaja, Directorate of Forensic Science -cum- Assistant Chemical Examiner to the Govt. of Gujarat State, Gandhinagar has categorically mentioned in its Report dated 11.11.2020 that the CCTV Video footage present in CD-R is not derived from the Hard Disk of DVR. As per the statement of Sh. Subhash Puri, Owner of M/s Rama Krishana Oil & Flour Mills, I/s Gilwali Gate, Amritsar, the hard disk of DVR has recording capacity of 08 to 10 days only and the CCTV Recording automatically gets deleted after lapse of this period.”
10. The aforesaid para 8 of the affidavit indicates that the DVR had a capacity of retaining and storing CCTV footage of 8 to 10 days only and that the older recording automatically gets deleted after lapse of said period. However, there is nothing specific in the report dated 11.11.2020 to show that as to whether the hard disk of the DVR concerned was examined to retrieve the automatically deleted footage from hard disk.
11. The petitioners otherwise have been on interim bail since 22.07.2020.

There is nothing on record to show that the petitioners have misused the

concession of bail. The CCTV footage does make some kind of dent in the case of prosecution though it will be at the stage of trial that the authenticity of the same can be fully established, particularly in view of the fact that report of the FSL does state that CCTV footage has not been altered.

12. The petitioners have earlier remained in custody for a period of about 6 months. While petitioner-Sham Lal is stated to be involved in another case under NDPS Act pertaining to recovery of 5 grams of *heroin*, petitioner-Sahil Malhotra is not stated to be involved in any other case. Conclusion of trial is likely to consume time inasmuch as the trial has not even commenced till date as none out of the cited 14 PWs has been examined so far.
13. As a sequel to the discussion made above, both the petitions merit acceptance and are hereby accepted. The petitioners are ordered to be released on bail subject to their furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
14. Since, both the petitioners are presently availing interim bail, it shall be open to the trial Court to impose any condition as deemed fit so as to ensure their regular appearance before the trial Court during the proceeding of the trial.
15. A photocopy of this order be placed on the connected file.

08.03.2022

Vimal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned: **Yes/No**
Whether reportable: **Yes/No**