

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 18.04.2022

1. CRM-M-21182-2021

Simerjit Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

2. CRM-M-25554-2021

Kawaljit Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.Lakshay Bector, Advocate
for the petitioner in CRM-M-21182-2021.

Mr.D.S. Gandhi, Advocate
for the petitioner in CRM-M-25554-2021.

Ms.Monika Jalota, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This order will dispose of two criminal miscellaneous petitions filed under Sections 482 Cr.P.C. for directing that the investigation of FIR no.16 dated 13.02.20221 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station Sultanwind, District Amritsar, be conducted fairly and impartially by an independent agency like Crime Branch or any other agency.

The first petition, i.e. CRM-M-21182-2021 has been filed by Simerjit Kaur wife of Varinderjit Singh @ Goldy (accused in FIR no.16 dated 13.02.2021) and the second petition i.e. CRM-M-25554-2021 has been filed by Kawaljit Kaur wife of Harpreet Singh (accused in FIR no.16 dated 13.02.2021). With the consent of all the parties, CRM-M-21182-2021 filed by Simerjit Singh has been taken up as main case and the facts have been taken from the said petition.

It is the case of the petitioners that their husbands have been falsely implicated in the above said FIR. Simerjit Kaur has stated that her marriage had taken place with Varinderjit Singh @ Goldy on 15.04.2002 and she and her husband are government teachers and her husband is posted as ETT teacher in Government Elementary School, Dhagana, Block Patti, District Tarn Taran and they are hard working and honest persons and there is no earlier criminal case registered against them. It is further pointed out that the election for Municipal Committee and Nagar Panchayat were to be held in the State of Punjab on 14.02.2021 and the husband of the petitioner had been deputed as Booth Level Officer in the earlier elections by virtue of his posting as a government teacher and was aware regarding electorate of the area and on 13.02.2021, the husband of the petitioner received a call from one Sanjeev Kumar, who was known to the husband of the petitioner and whose wife Mrs. Rama Rani was contesting elections from Ward no.9 of Tehsil Patti, District Tarn Taran as a candidate of the Aam Aadmi Party, seeking help from the husband of the petitioner to identify the voters who had left the ward due to shifting of their house, death, marriage etc. as the said candidate was fearing that the ruling party would use those candidates to cast bogus votes in their favour to win the elections. It has been averred

in the petition that on the request of said Sanjeev Kumar, the husband of the petitioner had met him and with his own hand made notes / identifications on the the voter list of Ward no.9, specific identification was made with respect to persons who were no longer available in the area at the time of elections. It has further been averred that apparently someone gave information regarding the said exercise to the members of the ruling party and also to the husband of the candidate who was contesting from Ward no.9 from the Congress party and the husband of the petitioner, in spite of making requests and giving explanation, could not pacify the concerned person, who thus, being annoyed with the petitioner on the said account, falsely implicated the husband of the petitioner in the present case. The incident in question, as per the petitioner, has been detailed in paragraph 8 of the petition, in which it has been stated that on 13.02.2021 at about at 8:10 PM, the husband of the petitioner entered into the parking of the Best Price Showroom in his car along with Gagandeep Singh and Harpreet Singh (husband of the petitioner in CRM-M-25554-2021). It has been further alleged that at the behest of the MLA, the police party including Investigating Officer Resham Singh (respondent no.8), Inspector Inderjit Singh (respondent no.7) and Vishal alias Pehalwan (respondent no.9) and other police officials illegally detained the husband of the petitioner and Harpreet Singh from the parking compound of Best Price in an Innova car and at the said time, the police officials were in plain clothes. It has been averred that Gagandeep Singh was permitted to go and after that, Varinderjit Singh @ Goldy and Harpreet Singh were made to sit in the Innova car by the police officials and respondent no.9 came back from the exit of the parking and drove the car of the husband of the petitioner which

is in the name of the petitioner, i.e. Swift car bearing registration no.PB-46-AC-8380 and followed the Innova car in which the two accused had been made to sit by the police officials and the entire incident had been captured in CCTV camera installed in the parking lot of the Best Price, Amritsar, which had been ordered to be preserved vide order dated 05.03.2021 passed by the learned Judge, Special Court, Amritsar, on an application moved by counsel for Varinderjit Singh @ Goldy and the said order has been annexed as Annexure P-3 with the present petition. It has also been averred that the police officials drove the car towards Amritsar. It has also been averred that thereafter, Varinderjit Singh @ Goldy and Harpreet Singh were falsely implicated in the said FIR in which it was alleged that the recovery of 300 grams of heroin had been effected from them and they had been arrested at 10:30 PM from the area of Dubarji Turn, Link Road, Lakha Singh Plots, Amritsar. It has also been submitted that the wife of Varinderjit Singh @ Goldy had given a detailed representation dated 06.05.2021 (Annexure P-5) to respondents no.2 to 4 and wife of Harpreet Singh had given a representation dated 03.03.2021 to various police authorities including respondents no.2,3,5 in CRM-M-2554-2021, informing them about the said false implication. It has been argued on behalf of the petitioners that in the present petition, specific allegation has been made against the investigating team, i.e. respondents no.6 to 9. It has also been submitted that when the present matter had come up for hearing on 02.07.2021, a coordinate Bench of this court was pleased to direct that final report under Section 173 Cr.P.C. be not presented before the competent court. It has further been pointed out that Varinderjit Singh @ Goldy and Harpreet Singh had filed two criminal miscellaneous petitions, i.e. CRM-M-30902-2021 and CRM-

M-33273-2021 under Section 439 Cr.P.C. for grant of regular bail in the FIR in question in which similar allegations, as have been made in the present petition, had been made. It has been submitted that this Court after considering the arguments raised by the petitioners and also noticing the averments made by the parties, vide order dated 07.04.2022, was pleased to allow both the petitions and ordered the release of the said Varinderjit Singh @ Goldy and Harpreet Singh on regular bail. It has further been pointed out that perusal of the said order would show that it had been noticed therein that a coordinate Bench of this Court vide order dated 02.03.2022 had directed that the CCTV footage in question be produced in the Court on 17.03.2022 and on 17.03.2022, a further direction had been given to the District and Sessions Judge, Amritsar, to see the said CCTV footage and to then submit his report and further District and Sessions Judge, Amritsar, in pursuance of the said order, had submitted his report dated 28.03.2022 and after considering the said report and the entire material on record, it was found that there were specific allegations against the police officials and there was a possibility of false implication in the case. It is, thus, vehemently prayed that the investigation in the present FIR be transferred to any independent agency for instance, the Punjab Bureau of Investigation. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***Babubhai vs. State of Gujarat and others***, reported as **2010(12) SCC 254**. Specific reference has been made to paragraph 27 of the said judgment wherein it has been observed that “A vitiated investigation is the precursor for miscarriage of criminal justice”. It has been submitted that once the police officials in questions are found to be involved in falsely implicating the accused, then the said police officials should not be

permitted to carry out the investigation in the said matter and in fact, even the same department should also not be involved in the investigation process as the colleagues of the said investigating officers, in order to justify the FIR, would proceed with a biased mind. It has been argued that justice should not only be done, but should also be seen to be done.

Learned State counsel, on the other hand, has opposed the present petition for transfer of investigation. Learned State counsel has pointed out that the reply by way of affidavit of Mangal Singh, Assistant Commissioner of Police, South, Amritsar City, dated 26.07.2021 has been filed and specific reference has been made to paragraphs 8 and 11 of the reply on merits. It has been pointed out that in paragraph 8 it has been specifically mentioned that a detailed enquiry has been conducted by the deponent in the representations given by Kawaljeet Kaur wife of Harpreet Singh with regard to the innocence of her husband Harpreet Singh and even Kawaljeet Kaur was given ample opportunities to prove innocence of her husband but she failed to produce any such alleged CCTV footage or any other cogent and substantial evidence and the registration of the said FIR has no political connection and even when the statement of Kawaljeet Kaur was recorded, she did not level any such allegation in her statement with regard to political vendetta for false implication of her husband Harpreet Singh and co-accused Varinderjit Singh @ Goldy. It has also been stated therein that Best Price neither falls in the jurisdiction of Police Commissionerate, Amritsar, nor accused Varinderjit Singh @ Goldy and accused Hapreet Singh were apprehended from the parking compound of Best Price, and no such CCTV footage has been produced by either of the present petitioners and that the present case has been registered at Police

Station Sultanwind within the territorial jurisdiction of Police Commissionerate, Amritsar City and the local MLA of Tehsil Patti, District Tarn Taran has no jurisdiction over the area of territorial jurisdiction of Police Commissionerate, Amritsar and thus, neither respondents no.7 to 9 have any link or connection with the local MLA of Tehsil Patti, District Tarn Taran, nor the petitioner has placed on record any such record or evidence which could substantiate the veracity of the assertions made by the petitioner. In paragraph 11 it has been mentioned that even the wife of Varinderjit Singh @ Goldy had given applications dated 28.05.2020 and 09.06.2021 and enquiry into the said applications was under process. It has further been pointed out that Annexure R-2/T is the enquiry report with respect to the application of Kawaljit Kaur wife of Harpreet Singh as per which it has been found that the FIR in question has been registered on the basis of correct facts and there is no need to take any action upon the said application. It has been submitted that the said enquiry had been conducted by Mangal Singh, Assistant Commissioner of Police, South, Amritsar City (as on 16.06.2021). Learned State counsel has further submitted that since the accused in the said FIR as well as the present petitioners have withdrawn their allegations against the sitting MLA thus, even the allegations against the police officials do not stand. It has further been submitted that even though the investigation has been stayed, but the police undertakes to carry out the investigation into the said FIR legally, impartially and in accordance with law. It has also been submitted that even as per the report of District and Sessions Judge, Amritsar, dated 28.03.2022 the case of the petitioners does not stand proved.

This Court has heard learned counsel for the parties and has perused the record.

It is not in dispute that Varinderjit Singh @ Goldy and Harpreet Singh had filed two petitions, i.e. CRM-M-30902-2021 and CRM-M-33273-2021 respectively under Section 439 Cr.P.C. for grant of regular bail. This Court after considering the contentions raised by both the parties as well as the report submitted by the District and Sessions Judge, Amritsar with respect to the CCTV footage which was provided for by the Best Price showroom, has granted bail to the petitioners. The relevant portion of the said order is reproduced hereinbelow:-

“Learned senior counsel for the petitioner Varinderjit Singh @ Goldy has submitted that in the present case, petitioners Varinderjit Singh @ Goldy and Harpreet Singh have been falsely implicated. He has further submitted that petitioner Varinderjit Singh @ Goldy and his wife are government teachers and the petitioner Varinderjit Singh @ Goldy was posted as ETT teacher in Government Elementary School, Dhagana, Block Patti, District Tarn Taran and the wife of Varinderjit Singh @ Goldy was posted as ETT teacher in Government Elementary School, Kot Khalsa, Amritsar and the petitioners have no criminal background and are not involved in any other criminal case. He has further submitted that election for Municipal Committee and Nagar Panchayat were to be held in the State of Punjab on 14.02.2021. He has argued that the petitioner was appointed as Booth Level Officer in the earlier elections and by virtue of his posting as a government teacher, he was aware about the electorate of the area and on account of the said experience and knowledge, one of the persons whose wife was contesting as a candidate of AAP Party, had sought some information / help from petitioner Varinderjit Singh @ Goldy on account of which certain members of the ruling party got annoyed. He has further argued that on account of the same, on 13.02.2021 at around 08:10 PM when the petitioner Varinderjit Singh @ Goldy entered into parking of Best Price showroom in his car along with Gagandeep Singh son of Inder Mohan and Harpreet Singh (petitioner in CRM-M-33273-2021),

then three police officials, i.e. Investigating Officer Resham Singh, Inspector Inderjit Singh and Head Constable Vishal alias Pehalwan accompanied by other police officials came and illegally detained the petitioners Varinderjit Singh @ Goldy and Harpreet Singh from the parking compound of Best Price in an Innova Car. He has argued that the police officials at the said time were in plain clothes and Gagandeep Singh son of Inder Mohan was allowed to go. Varinderjit Singh @ Goldy and Harpreet Singh (petitioners) were made to sit in Innova car by the police officials and HC Vishal alias Pehalwan, who, after making the petitioners sit in the Innova car and realising that the swift car bearing registration no.PB-46-AC-8380 was left in the parking, drove the above said Swift car which is in the name of the wife of Varinderjit Singh @ Goldy and followed the Innova car in which both the petitioners had been made to sit by the police officials. He has stated that the entire incident has been captured in the CCTV camera installed in the parking lot of Best Price, Amritsar and the same has been preserved vide order dated 05.03.2021 passed on an application moved by petitioner Varinderjit Singh @ Goldy. The said order has been annexed as Annexure P-4. Certain other allegations have been made in the petition but however vide order dated 02.03.2022 the learned counsel for the petitioner had got instructions from his client not to press any allegation made in the present petition qua any member of the legislative assembly (present or former) Punjab. Learned senior counsel for the petitioner Varinderjit Singh @ Goldy has further referred to the order dated 22.07.2021 vide which, on an application moved by the petitioners, the call details and tower locations of ten persons as detailed in para 3 of the said application, had been preserved. He has submitted that after having illegally picked up the petitioners from the above said place, the FIR in question was got registered and reference to the FIR would show that the same had been registered at 11:48 PM and it is stated in the said FIR that the petitioners were arrested from T point, Dubarji Turn, Link Road, Plots Lakha Singh, Amritsar, at around 10:30 PM. Learned senior counsel has further pointed out that the time period of the alleged occurrence as mentioned in the FIR reads as “time from 20.10 HRS to 22.30 HRS” and has submitted that the said time 08:10 corresponds with the plea taken by the petitioners that they were picked up at 08:10 from the Best Price showroom. It is also

*submitted that the allegation in the FIR to the effect that a secret informer had informed that Varinderjit Singh @ Goldy and Harpreet Singh, who were allegedly doing the business of selling heroin, is absolutely false inasmuch as there is no earlier FIR registered against the petitioners and rather Varinderjit Singh @ Goldy is a government teacher and the said allegation has been made only to make out a false case against the petitioners. It is submitted that apart from the fact that the present case is a case of false implication, learned senior counsel has further referred to Section 42 of the NDPS Act to contend that in the present case, the provisions of Section 42 of the NDPS Act have not been complied with inasmuch as firstly, the alleged secret information received had not been taken down in writing and secondly, even as per the FIR, the alleged incident had taken place between the time period starting from 8:10 to 10:30 PM, i.e. after sun set and thus, the proviso to Section 42 of the NDPS Act which was required to be followed, has not been followed. It is further submitted that no search warrant or authorisation had been taken and there was nothing in writing to show that the police officials had a reason to believe that such search warrants or authorisation could not be obtained without affording an opportunity to the petitioners to conceal the evidence or to escape. Learned senior counsel for Varinderjit Singh @ Goldy has relied upon a judgment of coordinate Bench of this Court in **Baljinder Singh @ Billa vs. State of Punjab** reported as **2012(6) RCR (Criminal) 2675** to contend that in such a scenario it is incumbent upon the police official to put his belief in black and white as to why he could not obtain the warrants. Learned senior counsel has further submitted that in the present case, even as per the prosecution version, the contraband, i.e. 300 grams heroin was stated to be wrapped in one transparent polythene envelope. In the said regard, learned senior counsel has submitted that it is highly unlikely for a person who has to carry the contraband, to carry the same in a transparent polythene bag and with respect to the same, learned senior counsel has relied upon various orders passed by coordinate Benches of this Court i.e. order dated 02.08.2021 passed in **CRM-M-4408-2021** titled as **"Banti Kaur @ Bhanti Kaur Vs. State of Punjab, Binder Kaur @ Goga Vs. State of Punjab** reported as **2021(3) RCR (Criminal) 360**, **Jaskaran Singh @ Jassu Vs. State of Punjab**, reported as **2021(2) RCR (Criminal) 837**, order dated*

28.02.2020 passed in CRM-M-8026-2020 titled as Lakhwinder Singh @ Lakha Vs. State of Punjab.

Learned senior counsel for petitioner Varinderjit Singh @ Goldy and learned counsel for the petitioner Harpreet Singh have jointly submitted that both the petitioners Varinderjit Singh @ Goldy and Harpreet Singh have been in custody since 13.02.2021 and are not involved in any other case and thus, the trial and its conclusion is likely to take time and thus have prayed that the petitioners be released on regular bail.

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This Court has heard learned counsel for the parties and has perused the record.

It is not in dispute that both the petitioners are not involved in any other case. It is the case of petitioner Varinderjit Singh @ Goldy that he and his wife are government teachers and he was posted as ETT teacher in Government Elementary School, Dhagana, Block Patti, District Tarn Taran and his wife was posted as ETT Teacher in Government Elementary School, Kot Khalsa, Amritsar. From the averments made in the petition, it is apparent that since petitioner Varinderjit Singh @ Goldy had been deputed as Booth Level Officer in the earlier elections and by virtue of him being a government teacher, he was aware regarding the electorate of the area, thus, he had clarified certain information which was sought by the husband of the candidate who was contesting from ward no.9 of Tehsil Patti, District Tarn Taran as a candidate of AAP party. It is further the case of the petitioner that on account of the same, the members of the ruling party got annoyed and had thus, falsely implicated the petitioners. Para 8 of the petition, i.e. CRM-M-30902-2021 in which the incident has been specifically detailed, is reproduced hereinbelow:-

“8) That on 13. 02.2021 itself at around 8.10 p.m. the petitioner entered the parking of Best Price Showroom in his Car along with Gagandeep Singh son of Inder Mohan, who was sitting on the seat adjoining the driver seat and Harpreet Singh, who was sitting on the back seat. At the behest of the MLA a Police party, including Investigating Officer Resham Singh, Inspector Inderjit Singh, Vishal alias Pehalwan, and other police officials illegally detained the petitioner and Harpreet Singh from the parking compound of Best Price in an Innova Car. At the time of

the said incident, the police officials were in plain clothes. Gagandeep Singh son of Inder Mohan was allowed to go. After that the petitioner and Harpreet Singh were made to sit in the Innova Car by the police officials and Head Constable Vishal alias Pehalwan came back from the exit of the parking and drove the car of the petitioner, which is in the name of the wife of the petitioner, i.e. Swift car bearing Registration No.PB-46-AC-8380 and followed the Innova Car in which the petitioner and Harpreet Singh had been made to sit by the police officials. All this was captured in the CCTV Camera installed in the parking lot of Best Price, Amritsar which has now been ordered to be preserved vide order dated 05.03.2021 passed by Id.Judge, Special Court, Amritsar on an application moved by the counsel for the petitioner. A copy of the order dated 05.03.2021 is annexed herewith as Annexure P-4.”

A perusal of the above paragraph would show that it was specifically averred that it was at 08:10 PM on 13.02.2021, that Varinderjit Singh @ Goldy and Harpreet Singh along with co-accused Gagandeep Singh are stated to have entered the parking of Best Price showroom in the swift car bearing Registration no.PB-46-AC-8380. It is further specifically mentioned that three police officials, i.e. Resham Singh Investigating Officer, Inspector Inderjit Singh, Vishal @ Pehalwan had then reached there in an Innova car and had detained both the petitioners and they were then made to sit in the Innova car. It has also been averred that Head Constable Vishal @ Pehalwan after realising that the swift car, which is in the name of wife of Varinderjit Singh @ Goldy, was left in the parking area, after the petitioners had been made to sit in the Innova car, came back from the exit of the parking and thereafter drove the above said Swift car and followed the Innova car. It has further been averred that the said incident has been recorded in the CCTV camera installed in the parking of Best Price. Annexure P-4 is the order dated 05.03.2021 which has been passed in an application filed by the petitioner Varinderjit Singh @ Goldy for preserving the said CCTV recording. The said application was allowed and the said CCTV recording of the Best Price parking lot was ordered to be preserved. The call details and tower locations of ten persons, which included the raiding party, i.e. SI Resham Singh, Inspector Inderjit Singh and Vishal @

Pehalwan were ordered to be preserved for the period ranging from 13.02.2021 to 14.02.2021 vide order dated 22.07.2021 passed by the Special Court, Amritsar. A coordinate Bench of this Court vide order dated 02.03.2022 directed the aforesaid CCTV footage to be produced in the Court on 17.03.2022. On 17.03.2022, the following order was passed:-

“Present: Mr. Sunil Chadha, Senior Advocate with Ms. Devyani Sharma, Advocate for the petitioners in CRR No.1104 of 2021, CRM-M-21182 of 2021 and CRM-M-30902 of 2021.

Mr. Vivek Salathia, Advocate for Mr. D.S. Gandhi, Advocate for the petitioners in CRR No.1047 of 2021, CRM-M-25554 of 2021 and CRM-M-33273 of 2021.

Ms. Monika Jalota, DAG, Punjab.

Mr. G.S. Bhatia, Advocate for Mr. V.P.Singh Bhatia, Advocate for Best Price Company.

On 02.03.2022, a co-ordinate Bench of this Court was pleased to pass the following order:-

“The matter has been taken up through video conferencing.

Learned Senior counsel for the petitioner submits that he has clear instructions from his client not to press any allegation made in the present petition qua any member of the legislative assembly (present or former) Punjab and therefore, any allegation made in this petition against any MLA (present or former) is ordered to be struck off.

On merits, learned Senior counsel for the petitioner inter alia contends that the petitioner was shown to have been arrested on 13.02.2021 at 10.30 P.M. from Dubarji Link Road, Amritsar whereas CCTV footage of Best Price, Amritsar clearly shows that he was illegally picked up on 13.02.2021 at 8.10 P.M. from the parking compound of Best Price, Amritsar.

The afore CCTV footage, under orders of the Trial Court dated 05.03.2021, stand preserved. The State is directed to produce the same on the adjourned date.

Adjourned to 17.03.2022.

*March 02, 2022
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*(DEEPAK SIBAL)
JUDGE”*

In pursuance of the said order, learned counsel appearing for Best Price has brought the CCTV footage in a Pen Drive. The same has been preserved by the Best Price in pursuance of the

order passed by the Judge, Special Court, Amritsar dated 05.03.2021.

In the present case, there is a serious dispute as to whether the present petitioner and Harpreet Singh were arrested on 13.02.2021 at 10:30 P.M from T-Point, Dubarji Link Road, Amritsar or were illegally picked up on 13.02.2021 at 08.10 PM from the parking compound of Best Price, Amritsar. In view of the above, it is deemed appropriate to seek a report on the above-said aspect from the District and Sessions Judge, Amritsar. The following directions are given so as to enable the District and Sessions Judge, Amritsar to see the above-said CCTV footage and to submit its report:-

(i) the Registry of this Court is directed to supply copies of the CRM-M-30902 of 2021 – Varinderjit Singh @ Goldy Vs. State of Punjab and others, and CRM-M-21182-2021 – Simerjit Kaur Vs. State of Punjab and others, through e-mail to the Office of District & Sessions Judge, Amritsar. The needful be done upto 22.03.2022. The counsels appearing in the trial Court for the accused as well as the State Counsel are also directed to carry the physical copies of the petition so that the same could be produced before the District and Sessions Judge, Amritsar for his perusal on the date when the parties are directed to appear before the District and Sessions Judge which has been detailed hereinunder;

(ii) The State is directed to produce the petitioners Varinderjit Singh alias Goldy and Harpreet Singh, who are stated to be in custody, before the District and Sessions Judge, Amritsar on 24.03.2022 at 11:00 A.M. The police officials who are involved in the present case and who were stated to be present at the time of arrest, i.e. Resham Singh, SI, CIA Staff, Amritsar, Vishal alias Pehalwan, Head Constable CIA Staff, Amritsar and Inderjit Singh Inspector CIA Staff, Amritsar would also appear before the District and Sessions Judge, Amritsar on 24.03.2022 at 11:00 A.M. The State is directed to make sure that the above-said officials appear on the said date;

(iii) the authorised representative of the Best Price Company, GT Road, Amritsar who has the Pen Drive in its possession would produce the said Pen Drive before the District and Sessions Judge, Amritsar on 24.03.2022 at 11:00 A.M;

(iv) the District and Sessions Judge, Amritsar is requested to see the CCTV footage on 24.03.2022 in the presence of the petitioners,

Varinderjit Singh and Harpreet Singh as well as the police officials mentioned hereinabove in sub para (ii) and after considering the same, submit a report with respect to the aspect as to whether the petitioners Varinderjit Singh alias Goldy and Harpreet Singh were picked up on 13.02.2022 at 08:10 P.M from the parking compound of Best Price, Amritsar or not, as per the CCTV footage produced before him;

(v) In case, it is not possible for the District and Sessions Judge, Amritsar to see the CCTV footage on 24.03.2022 then the District and Sessions Judge may give a date convenient to him to see the CCTV footage and direct all the parties concerned to appear before him on the said date and to see the CCTV footage on the said date. The District and Sessions Judge, Amritsar is requested to see the CCTV footage in the presence of the above-said persons before 30.03.2022 and the report regarding the same be submitted in a sealed cover to this Court upto 04.04.2022.

Adjourned to 04.04.2022 to await the report of the District and Sessions Judge, Amritsar.

Office/ Registry is directed to send the copy of this order to the learned District and Sessions Judge, Amritsar for necessary compliance forthwith.

A photocopy of this order be placed on the files of connected cases.

17.03.2022

**(VIKAS BAHL)
JUDGE”**

In pursuance of the said order, the report dated 28.03.2022 was submitted by the District and Sessions Judge, Amritsar. The relevant portion of the said report is reproduced as under:-

“I have watched the entire CCTV footage contained in the said pen drive with the assistance of Shri P.M. Zakhmi, Adv. counsel for the petitioners Varinderjit Singh @ Goldy and Shri Jatinder Shri Jatinder Karkara, Adv., proxy counsel for Shri Satnam Singh, Adv., counsel for petitioner Harpreet Singh, Shri VPS Bhatia Advocate, counsel for Best Price, Amritsar and Shri Shvraj Singh Sran, Additional Public Prosecutor for the State. It was found that CCTV footage dated 13.3.2021 of the parking compound was saved in a black and white mode in the said pen drive. When CCTV footage as saved in a folder 'Out

Gate' parking compound of Best Price was played, it revealed that at about 8.08 P.M, movement of some persons was seen near some four wheelers parked in the parking. However, faces of such persons were not clear and even registration numbers of such vehicles were also not visible. Since the CCTV footage is saved in a black and white mode, so colour of said vehicles could not be ascertained. Countering such situation, it cannot be said as to whether petitioners Varinderjit Singh @ Goldy and Harpreet Singh were present in the parking compound of Best Price, Amritsar at the relevant time along with their vehicle or not. Thereafter, at about 8:11:39 P.M, a four wheeler vehicle was seen going towards the exit point, Again, the faces of persons sitting in the said vehicle as well as of driver were not visible and even registration number of said vehicle was also not visible. Similarly, colour of the said vehicle could not be ascertained due to black and white CCTV footage. Under these set of circumstances, it is not clear as to whether petitioners were picked up and taken away in the said vehicle from the parking compound of Best Price or not. Further, at about 8.13 P.M., one person with his face covered with handkerchief was seen running towards a four wheeler parked in the parking, but the face of that person is also not visible. As such, he could not be identified as to who was he. Then, another CCTV footage, which was saved as 'PTZ' (folder) in the said pen drive was also played and it revealed that at about 8.26 P.M., a four wheeler was going towards exit point. The face of the driver of said vehicle was not visible. Even it was also not clear as to whether any other person was sitting in the said vehicle besides driver or not. Furthermore, registration number of said vehicle was also not clear. Similarly, colour of said vehicle could not be ascertained due to black and white mode CCTV footage.

Thus, from the entire CCTV footage, it is not established that petitioners Varinderjit Singh@ Goldy and Harpreet Singh were picked up on 13.2.2021 at 8.10 P.M. from the parking compound of Best Price, Amritsar, as per CCTV footage produced before this Court by Shri Dinesh Kumar, authorised representative of Best Price, Amritsar.”

A perusal of the above report would show that on account of CCTV footage being in black and white mode, the faces of the persons could not be seen very clearly and thus, it could not be established that the petitioners were picked up on 13.02.2021 at 8:10 PM, however it had been noticed in the said report that at about 08:08 PM in the parking compound of Best Price, movement of some persons was seen near some four wheelers parked in the parking. Learned senior counsel for the petitioners has highlighted the fact that the same is in consonance with the averments made in the present petition to the effect that at 08:10 PM the petitioners had reached the parking lot and thereafter the police officials in plain clothes had detained them. It was further observed in the report that at 8:11:39 PM, a four wheeler was seen going towards the exit point. Learned senior counsel for the petitioner has again pointed out that as per his averments, as made in the petition, the Innova vehicle, which was carrying the petitioners and the police officials, had gone towards the exit point. Further perusal of the report would show that at about 8:13 PM one person with his face covered with handkerchief, was seen running towards a four wheeler parked in the parking, but the face of the said person was also not visible and another CCTV footage revealed that it was at 8.26 P.M. that a four wheeler was going towards the exit point. Learned senior counsel has highlighted that as per his averments in the petition, the said four wheeler is Swift car which belongs to the wife of petitioner Varinderjit Singh @ Goldy and was being taken out by HC Vishal @ Pehalwan as has also been averred in the petition. Although the said report does not conclusively prove the averments made by the petitioner in the petition but it does raise some arguable points in favour of the petitioners which would be determined during the course of trial. Moreover, it is the case of the prosecution that the secret information was received by the police at 10:30 PM whereas on the first page of the FIR (Annexure P-1) in column no.3, the starting time has been mentioned 8:10 hours which time is in consonance with the time mentioned in the petition, when as per the case of the petitioner, the petitioners were picked up from the parking lot of Best Price and thus, the aspect as to whether there is false implication or not, will be considered by the trial Court on the basis of the evidence which would be produced before the Court.

In relation to the argument raised by learned senior counsel for the petitioner pertaining to the contraband having been recovered from a “transparent polythene envelope”, a perusal of the affidavit of Mangal Singh, Assistant Commissioner of Police, filed in CRM-M-21182-2021 which has been referred to by the learned State counsel, would show that in paragraph 3 of the same, it has been stated that 300 grams of heroin was wrapped in one “transparent polythene envelope”. The relevant portion of said paragraph 3 of the affidavit is reproduced hereinbelow:-

“During which, 300 gm heroin wrapped in one transparent polythene envelope was recovered from dash board of the above car, which was taken into police possession as per standard procedure and the above accused Varinderjit Singh @ Goldy (husband of the petitioner) and Harpreet Singh were arrested in the present case on the same day on 13.02.2021 by SI Resham Singh.”

It has been repeatedly held by various coordinate Benches of this Court that it is highly unlikely for a person who intends to commit an offence with respect to contraband, to carry the same in a transparent polythene bag.”

A perusal of the order reproduced hereinabove would show that specific allegations had been made on behalf of Varinderjit Singh @ Goldy and Harpreet Singh that they have been falsely implicated on account of Varinderjit Singh @ Goldy helping the husband of the candidate of the Aam Aadmi Party who was contesting the elections of the Municipal Committee from Ward no.9 of Tehsil Patti, District Tarn Taran and the entire incident depicting as to how the said Varinderjit Singh @ Goldy and Harpreet Singh were apprehended from the parking lot of Best Price showroom on 13.02.2021 at 8:10 PM, had also been detailed. This Court had even compared and traced correspondence between the report submitted by the District and Sessions Judge, Amritsar with the averments made in paragraph 8 of the regular bail petition i.e. CRM-M-30902-2021 (which is verbatim

found that there were several arguable points in favour of the petitioners, which, if proved during the course of the trial, would indicate that the petitioners have been falsely implicated in the FIR in question.

Three points which stand out on a comparison between paragraph 8 of the above said petition, which is verbatim same as paragraph 8 in the present petition, and the report dated 28.03.2022 submitted by the District and Sessions Judge, Amritsar, as have also been noticed in the order reproduced hereinabove, are as follows:-

- i) In paragraph 8 it has been averred that on 13.02.2021 at about 08.10 PM accused Varinderjit Singh @ Goldy had entered the parking of the Best Price showroom in his car along with Gagandeep Singh son of Inder Mohan and accused Harpreet Singh, who were also sitting in the said car. In the report dated 28.03.2022, it has been observed after seeing the CCTV footage in question that at about 8.08 PM, movement of some persons was seen near some four wheelers parked in the parking compound of Best Price.
- ii) In paragraph 8 of the petition, it has been averred that Investigating Officer Resham Singh, Inspector Inderjit Singh, Vishal @ Pehalwan and other police officials had illegally detained the accused Varinderjit Singh @ Goldy and Harpreet Singh in a Innova car and in the report dated 28.03.2022 it has been observed that at about 8:11:39 PM, a four wheeler vehicle was seen going towards the exit point. The said four wheeler as per the case of the petitioners was the said Innova car.

iii) In paragraph 8 of the petition, it has been stated that after Varinderjit Singh @ Goldy and Harpreet Singh were made to sit in the Innova car, Head Constable Vishal @ Pehalwan had come back from the exit of the parking so as to take the Swift car, which is in the name of the wife of Varinderjit Singh @ Goldy and had then followed the Innova car. In the report dated 28.03.2022 it has been found that at about 8:13 PM, one person with his face covered with a handkerchief was seen running towards four wheeler parked in the parking and at about 8:26 PM, a four wheeler was seen going towards the exit point. It is the case of the petitioners that the said person, who had gone to get the four wheeler, was Constable Vishal @ Pehalwan and the second car which was going towards the exit point was the Swift car which is in the name of the petitioner, who is the wife of Varinderjit Singh @ Goldy.

However, no final findings with respect to the said aspect had been given in the said order dated 07.04.2022, as the same would cause prejudice to either the case of the prosecution or that of the petitioner. From the said order, as well as the averments made in the present petition, it comes about that there are specific allegations levelled against respondents no.6 to 9, who are the persons involved in the investigation of the present FIR. The said allegations, when seen in the light of the report of the District and Sessions Judge, Amritsar, cannot be ignored.

The reliance sought to be placed by learned State counsel upon the enquiry report (Annexure R-2/T) with respect to the application of

Kawaljit Kaur wife of Harpreet Singh, would not in any manner come in the way of the case of the petitioners inasmuch as a detailed representation dated 06.05.2021 had been given by Simerjit Kaur wife of Varinderjit Singh @ Goldy which comprehensively detailed the aspect of false implication of the accused Varinderjit Singh @ Goldy and Harpreet Singh by the police at the behest of the political bosses and also referred to the CCTV footage in question and reference regarding the said representation has also been made in paragraph 11 of the present petition and the said representation, as well as the other representations given by the said Simerjit Kaur, is even as per paragraph 11 of the reply filed by the State, are still being enquired into and no final report with respect to the same has been annexed with the reply or has been produced by the State before the Court. Moreover, once the above said facts have been brought to the notice of this Court, then merely because the Assistant Commissioner of Police, South, Amritsar City has found, while enquiring into the application filed by Kawaljit Kaur, that the FIR has been based on correct facts, the same would not come in the way of this Court in passing the necessary orders, in accordance with law.

It is a matter of settled law, as observed by the Hon'ble Supreme Court in ***Babubhai's*** case (supra) that “*a vitiated investigation is the precursor for miscarriage of criminal justice.*” In the said judgment, by relying upon various relevant judgments on the point in question, it was also noted that “*the investigator must be alive to the mandate of Article 21 and is not empowered to trample upon the personal liberty arbitrarily*”. It is on account of the said averments that in the present case, a coordinate Bench of this Court vide order dated 02.07.2021 had directed the final report under

Section 173 Cr.P.C. to be not presented before the competent Court. On account of said order, till date, the investigation is not complete. The question before this Court is as to whether in the background of the facts and circumstances which have been noticed hereinabove and have also been noticed while granting regular bail to Varinderjit Singh @ Goldy and Harpreet Singh, the FIR in question can be permitted to be investigated into by respondents no.6 to 9, against whom specific allegations have been made or should the same be transferred to an independent agency, such as the Punjab Bureau of Investigation, as has been suggested on behalf of the petitioners. This Court is sanguine of the fact that a transfer of investigation is not to be done in a routine matter at the behest of the accused. However, considering the totality of the facts and circumstances noticed hereinabove, this Court is of the opinion that in order to do substantial justice and so as to ensure that the real truth comes before the Court, both the petitions deserves to be allowed and are thus, allowed and the investigation with respect to FIR no. no.16 dated 13.02.20221 registered under Sections 21 and 29 NDPS Act at Police Station Sultanwind, District Amritsar, is directed to be transferred to the Punjab Bureau of Investigation. The investigating officer who has been investigating into the present FIR uptil now, shall hand over the investigation papers / record to the new investigating agency, i.e. The Punjab Bureau of Investigation and the said agency, which has now been entrusted with the said investigation, shall carry out further investigation in the said FIR, in accordance with law. The Director of Punjab Bureau of Investigation would mark the present FIR to a competent investigating officer of the Punjab Bureau of Investigation and the said investigating officer would also ensure the smooth transfer of investigation from the

present investigating officer to the Punjab Bureau of Investigation and thereafter, would carry out fair and thorough investigation into the said FIR, in accordance with law.

(VIKAS BAHL)
JUDGE

April 18, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No