

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Date of decision : 07.04.2022

1.

CRM-M-30902-2021

Varinderjit Singh @ Goldy

... Petitioner

Versus

State of Punjab

... Respondent

2.

CRM-M-33273-2021

Harpreet Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Lakshay Bector, Advocate
for the petitioner in CRM-M-30902-2021

Mr. D.S. Gandhi, Advocate
for the petitioner in CRM-M-33273-2021.

Ms.Monika Jalota, DAG, Punjab.

VIKAS BAHL, J.(ORAL)

This order will dispose of two criminal miscellaneous petitions
filed under Section 439 Cr.P.C. for grant of regular bail in FIR no.16 dated
13.02.2021 registered under Sections 21 & 29 of the Narcotic Drugs and
Psychotropic Substances, Act, 1985 (in short “NDPS Act”) at Police Station
Sultanwind, District Amritsar.

The first petition is CRM-M-30902-2021 titled as “Varinderjit Singh @ Goldy vs. State of Punjab” and the second petition is CRM-M-33273-2021 titled as “Harpreet Singh vs. State of Punjab”. With the consent of both the parties, CRM-M-30902-2021 filed by petitioner Varinderjit Singh @ Goldy is being taken up as lead case and the facts are being noticed from the said petition.

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.

Learned State counsel, on the other hand, has vehemently opposed both the petitions for regular bail. It has been argued that a false story has been concocted by the petitioners so as to prove that the present case is a case of false implication. The fact that the petitioners were aware of the names of the police officials who apprehended them, despite them being in plain clothes, would show that the story put forth by the petitioners is false. It is submitted that as far as compliance of Section 50 of the NDPS Act is concerned, ACP Harminder Singh was a gazetted officer before whom the said recovery had been effected, only after the petitioners had stated that they wanted to be searched in the presence of the said gazetted officer and had given their consent memos. Learned State counsel has also relied upon the affidavit of Mangal Singh, Assistant Commissioner of Police, South, Amritsar City, which has been filed in connected direction petition, i.e. CRM-M-21182-2021 filed by the wife of petitioner Varinderjit Singh @ Goldy seeking transfer of investigation. It has been stated that perusal of the said affidavit would show that the entire procedure as prescribed by law has been duly followed. Specific reference has been made to paragraphs 3 and 4 of the said affidavit. It has been pointed out that SI Resham Singh along with police officials received secret information and on the basis of the said secret information, set up a naka and thereafter, apprehended the petitioners who were travelling in a swift car bearing registration no.PB46-AC-8380, and in compliance of the provisions of Section 50 of the NDPS Act, the petitioners were given the option of being searched before a Magistrate or gazetted officer and the petitioners opted to be searched before a gazetted officer and accordingly, Harminder Singh,

PPS, Assistant Commissioner of Police, Detective, Amritsar City was requested to come present at the spot and he reached the spot and he also apprised the petitioners of their legal right under Section 50 of the NDPS Act and accordingly the consent memos of the petitioners were prepared. It has further been stated that independent witness was sought to be joined but no one consented to the same and thereafter the personal search of the petitioners was conducted and even their car was searched and 300 grams of heroin, wrapped in one transparent polythene envelope, was recovered from the dash board of the said car. It has been submitted that Varinderjit Singh @ Goldy also suffered a disclosure statement to the effect that he was a government teacher and his cousin Kanwarjit Singh was habitual of consuming heroin and he had died in 2012 due to addiction and that he, alongwith Harpreet Singh (petitioner) also used to run a shop of sale-purchase of cars and it was admitted by Varinderjit Singh @ Goldy that he had been consuming heroin since 2018 and his partner Harpreet Singh knew about it and they both, on asking of Gagandeep Singh @ Sonu, had come to supply heroin. It has further been submitted that the petitioners retracted from the earlier disclosure statements with respect to purchase of heroin from Gagandeep Singh and co-accused Hapreet Singh (petitioner in CRM-M-33273-2021) had further disclosed that he had purchased the recovered heroin from some known person, who was a resident of Ludhiana. In order to rebut the arguments raised by learned senior counsel for the petitioner Varinderjit Singh @ Goldy, learned State counsel has referred to ruqa (taken on record as Mark A), as per which the same facts as are stated in the FIR, have been detailed and the said ruqa is stated to have been prepared at 10:30 PM and in the said ruqa (as also in the FIR), the words “ in case

without losing any time nakabandi is held” have been stated and has thus submitted that the proviso of Section 42 of the NDPS Act has not been violated in the present case inasmuch as in the ruqa it has been mentioned that the nakabandi should be done without losing time for the offenders to be caught. Learned State counsel has further referred to Annexure R-3 to show that Varinderjit Singh @ Goldy had taken treatment at a deaddiction centre for some time. Learned State counsel has relied upon the judgment of Union of India through Narcotics Control Bureau, Lucknow vs. Md.Nawaj Khan, reported as **2021(3) SCC (CrI) 721** that the plea with respect to Section 42 of the NDPS Act has to be seen at the time of trial and is not required to be considered for grant of regular bail. It has also been submitted that in the present case, recovery of 300 grams of heroin had been effected and the same is of commercial quantity and thus, the provision of Section 37 of the NDPS Act would apply and the petitioners would not be entitled to grant of regular bail on account of the bar contained under Section 37 of the NDPS Act. Learned State counsel has further pointed out that in the present case the petitioners had approached this Court by filing a direction petition and in the said case, an interim order was passed to the effect that the challan be not presented and thus, the present petitions have been filed prior to the presentation of challan and should not be entertained at this stage.

Learned senior counsel for petitioner Varinderjit Singh @ Goldy, in rebuttal, has submitted that even in case the wordings in question as have been shown to be stated in the alleged ruqa, which has been produced today in the Court, or the wordings in the FIR to the same effect are taken into consideration, then also, there is nothing therein, specifically

stating, as to what were the grounds on the basis of which the police official had reasons to believe that the search warrants or authorisation could not have been obtained. It is submitted that a mere vague statement in the ruqa / FIR does not reflect the compliance of Section 42 of the NDPS Act.

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

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
Jyoti 1*

*(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

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

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.

The coordinate Bench of this Court in ***Banti Kaur @ Bhanti Kaur's*** case (supra) has held as under:-

“1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against her vide FIR No.191, dated 8.10.2020, Police Station Cantt Bathinda, District Bathinda, under Section 22 of NDPS Act, wherein it is alleged that the petitioner was caught red-handed while carrying a transparent plastic polythene bag which was found to contain 1000 tablets of ‘Clovidol’.

2. Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the instant case and that she has an unblemished record and is not involved in any other case and it is highly unlikely that any person who is carrying contraband would carry the same in a transparent bag so as to invite attention, including that the police.

3. Opposing the petition, learned State counsel has not disputed the fact that the contraband is alleged to have been carried in a transparent plastic polythene bag. He has however, submitted that the weight of the total recovered contraband works out to 410 grams of ‘Tramadol’ which would fall within the category of ‘commercial quantity’. Learned State counsel has however, informed that the petitioner is not involved in any other case and has presently been behind bars since the last about 9 months and 17 days.

4. I have considered rival submissions addressed before this Court.

5. It is not disputed that the contraband was alleged to have been carried by the petitioner in a transparent polythene bag. It is certainly highly unlikely that a person who is committing an offence in respect of any contraband would do it in such a manner that his/her detection is inevitable. Carrying contraband in a transparent polythene bag making it clearly

visible to others would surely invite attention of everybody who passes by. In these circumstances the case of the prosecution is rather rendered suspect particularly in view of the fact that the petitioner is not even stated to be a previous convict and is a lady who has been behind bars since the last about 9 months. In view of the aforesaid discussion particularly the fact that the petitioner is a lady and is not even a previous convict, the petition is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

2.8.2021

(GURVINDER SINGH GILL)
JUDGE”

A perusal of the said judgment would show that although, in the said case, recovery was of commercial quantity but it was found that since recovery was effected from a transparent polythene bag, the same made the case of the prosecution doubtful and it was observed therein that as it was highly unlikely that a person who is committing an offence with respect to the contraband, would carry the contraband in a transparent polythene bag.

The Coordinate Bench in ***Jaskaran Singh @ Jassu's*** case (supra), after considering the several judgments on the same issue, had also granted the concession of regular bail to the petitioner in that case. Relevant portion of the judgment is reproduced as under:-

“2. Relies upon the decision of this Court in Lakhwinder Singh alias Lakha vs. State of Punjab (CRM-M No.8026 of 2020) and of Co-ordinate Benches in Binder Kaur alias Goga vs. State of Punjab (CRM-M No.4584 of 2020) and Mandir Singh vs. State of Punjab (CRM-M No.8035 of 2019) to contend that a person engaged in the trade of contraband would never be expected to carry the same in any transparent bag which would be visible to the naked eyes.

3. Per contra, the bail application is opposed on behalf of the

State by contending that the recovery of commercial quantity of contraband was made from the car of the petitioner himself.

4. Be that as it may, without prejudice to the merits of the submission raised on behalf of the petitioner, but considering that he is admittedly not involved in any other case under the NDPS Act, and also considering that he has remained in detention well above 05 months since 14.12.2019, at this stage, the petitioner may be released on regular bail to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned subject to imposition of appropriate terms and conditions.”

The Coordinate Bench of this Court in ***Binder Kaur @ Goga's***

case (supra), had held as under:-

“2. Learned counsel for the petitioner has vehemently argued that in the present case the petitioner has been falsely implicated. He has further stated that the petitioner is a young lady of 38 years of age, having a family and has good antecedents. He has further stated that there is no past history of the petitioner and she is not involved in any other case till date. He has further contends that even as per the allegations contained in the FIR, the petitioner was carrying 1000 tablets containing Tramadol Hydrochloride salt in her hand, which was in a transparent polythene bag. Learned counsel states that the story put forward by the police is ex facie concocted because in case any person wishes to do the trading or to carry the contraband then it would never be put in a transparent bag. He has further pointed out that in the FIR it has been repeatedly recorded that bag was transparent in nature. He has further submitted that the petitioner is in custody since 08.11.2019.

xxx xxx xxx

4. Learned State counsel has filed the custody certificate of the petitioner by way of affidavit of Rajdeep Singh Brar, Deputy Superintendent, Central Prison, Faridkot. Same is taken on record. As per the custody certificate the petitioner is in custody for a period of 02 months and 27 days and there is no other case against her. He further submits that after completion of investigation and presentation of challan, the charges have also been framed by the trial Court.

xxx xxx xxx

6. *At the time of deciding bail application there are various relevant factors, which can be taken into consideration. Prima facie probability of influencing witnesses is one of the element factor and also as to whether the petitioner is particularly involved in any other case is also a relevant factor. It is also relevant in any case for deciding the bail application as to what is the stage of the case. In the present case the investigation is already over and the petitioner is in custody for about three months and this Court while deciding the bail application would not go into the merits of the case. Nothing is apparent to show that petitioner may influence the witnesses. Therefore, without meaning any expression of opinion on the merits of the case, it is ordered that the petitioner be released on regular bail subject to her furnishing requisite bail bonds/surety bonds to the satisfaction of the trial Court.”*

A perusal of the above judgment would show that in fact, bail was granted on the said point in a case where the accused was in custody only for a period of three months. Similarly, in **Lakhwinder Singh @ Lakha's** case (supra), the Coordinate Bench of this Court had held as under:-

“2. Ld. Counsel for the Petitioner relies on a decision of a Coordinate Bench of this Court in 'CRM-M No.4584 of 2020-Binder Kaur alias Goga vs. State of Punjab', to contend that it is unbelievable that a person engaged in the business of Drug Smuggling, will carry the contraband in a transparent Bag. The applicant, in the aforesaid case, in the given circumstances, considering that she was not involved in any other case under the NDPS Act and challan against her had already been submitted, was therefore released on bail by the Bench after she had remained in detention for 02 months and 27 days.

3. The detention undergone by the present Petitioner is much more being 08 months, and he is also not stated to be involved in any other case under the NDPS Act.

4. Challan against the Petitioner has already been submitted and the trial is still pending.

5. As such, considering the long detention already undergone by the present Petitioner and without commenting on other

merits of the case, he is ordered to be released on bail to the satisfaction of the Ld. Trial Court concerned.

6. Disposed off.”

The above said point as well as question as to whether there was due compliance of Section 42 of the NDPS Act or not, would be debatable issues to be determined during the course of trial.

With respect to the bar under Section 37 of the Act of 1985, it would be relevant to refer to various judgments passed by the Hon'ble Supreme Court as well as by this High Court. In ***Criminal Appeal No.965 of 2021*** titled as ***“Dheeren Kumar Jaina v. Union of India”***, the Hon'ble Supreme Court in a case where allegation in the chargesheet was with respect to 120 kg of contraband i.e. “ganja”, thus, being of commercial quantity, was pleased to grant bail after setting aside the order of the High Court where the said application for grant of regular bail had been rejected.

A co-ordinate Bench of this Court in a detailed judgment titled as ***“Ankush Kumar @ Sonu v. State of Punjab”*** reported as ***2018 (4) RCR (Criminal) 84***, had considered the provision of Section 37 of the Act of 1985 in extenso and had granted bail in a case which involved commercial quantity. The relevant portion of the said judgment is reproduced as under:

“But, so far as second part of Section 37 (1) (b) (ii), i.e. regarding the satisfaction of the Court based on reasons to believe that the accused would not commit 'any offence' after coming out of the custody, is concerned, this Court finds that this is the requirement which is being insisted by the State, despite the same being irrational and being incomprehensible from any material on record. As held above, this Court cannot go into the future mental state of the mind of the petitioner as to what he would be, likely, doing after getting released on bail. Therefore, if this Court cannot record a reasonable satisfaction that the petitioner is not likely to commit 'any offence' or 'offence under NDPS Act' after being released on bail, then this

court, also, does not have any reasonable ground to be satisfied that the petitioner is likely to commit any offence after he is released on bail. Hence, this satisfaction of the Court in this regard is neutral qua future possible conduct of the petitioner.”

The Special Leave Petition (Criminal) Diary No.42609 of 2018 filed against the aforesaid judgment of the Co-ordinate Bench of this Court, was dismissed by the Hon'ble Supreme Court.

Further, vide order dated 25.02.2021 in CRM-M-20177-2020, a Co-ordinate Bench of this Court granted regular bail to an accused who was involved in a case wherein recovery was of 3.8 kgs of “charas” (commercial quantity) after being in custody for 1 year and 7 months. The said order was upheld by the Hon'ble Supreme Court vide order dated 24.08.2021 in a Petition for Special Leave to Appeal (Crl.) No.5852/2021 titled as **“Narcotic Control Bureau v. Vipin Sood and another”**.

The Hon'ble Supreme Court of India vide order dated 12.10.2020 passed in Criminal Appeal No.668 of 2020 titled as **“Amit Singh @ Moni v. Himachal Pradesh”** was pleased to grant regular bail in a case involving 3 kg and 800 grams of “charas” primarily on the ground of substantial custody and also, the fact that the trial would likely take time to conclude.

In Criminal Appeal No.827 of 2021 titled as **“Mukarram Hussain v. State of Rajasthan and another”**, the Hon'ble Apex Court vide judgment dated 16.8.2021 was also pleased to grant bail wherein the quantity of the contraband was commercial in nature.

A Co-ordinate Bench of this Court in CRM-M 10343-2021 titled as **“Ajay Kumar @Nannu v. State of Punjab”** and other connected matters, vide Order dated 31.03.2021, after taking into consideration the

stipulations of Section 37 of the Act of 1985, was pleased to grant regular bail in a case involving commercial quantity and a condition was imposed on the petitioner therein while granting the said bail and the said condition was incorporated in para 21 of the said judgment, which reads as under:

“21. However, the petitioners are granted regular bail subject to the condition that they shall not commit any offence under the NDPS Act after their release on bail and in case of commission of any such offence by them after their release on bail, their bail in the present case shall also be liable to be cancelled on application to be filed by the prosecution in this regard.”

Further, a Division Bench of this Court vide judgment dated 31.08.2021 passed in CRM-8262-2021 in CRA-S-3721-SB of 2015 titled as **“Harpal Singh vs. National Investigating Agency and another”**, granted suspension of sentence in a case where the recovery was of commercial quantity. In the abovementioned order, the Division Bench had taken into consideration the right vested with an accused person/convict under Article 21 of the Constitution of India with regard to speedy trial. Further, the judgment of Hon'ble the Supreme Court in **State (NCT of Delhi) v. Lokesh Chadha** reported as **(2021) 5 SCC 724** was also taken into account and the provisions of Section 37 of the Act of 1985 were considered and the sentence of the applicant-appellant therein was suspended after primarily considering the period of custody of the applicant-appellant therein and also the fact that the appeal was not likely to be heard in near future. Reference in the order was also made to the Division Bench judgment of this Court in **Daler Singh v. State of Punjab** reported as **2007 (1) R.C.R. (Criminal) 316** and the view taken in Daler Singh's case (supra) was reiterated and followed. In the above said judgment, it was also noticed that the grounds

for regular bail stand on a better footing than that of suspension of sentence which is after conviction. A recent Division Bench of this Court in CRM-M-3773-2019 in Criminal Appeal (D)-198-DB-2017 vide a detailed judgment dated 12.01.2022 had, after considering a plethora of judgments, observed that in case the accused person is able to make out his case within the parameters of Article 21 of the Constitution of India then he deserves the concession of suspension of sentence even in the face of Section 37 of the NDPS Act. The said observations have been made primarily by considering the custody of the convict without considering the merits in detail. It is apparent that to meet the requirement of Section 37 of the Act of 1985, various Courts have taken into consideration the merits of the case and the period of custody and where in a case there are arguable points on merits and the custody is also adequate, the Hon'ble Supreme as well as various High Courts have granted bail even in cases involving commercial quantity.

In the present case, both the petitioners have been in custody since 13.02.2021 (1 year 1 month and 24 days) and are not involved in any other case and do not have any criminal background and a coordinate Bench of this Court in the direction petition filed by the wife of the petitioner Varinderjit Singh @ Goldy praying for transfer of investigation, has directed that the challan be not presented and thus, the investigation and trial are likely to take time and further, there are several arguable points in the present case which have been discussed hereinabove. Moreover, this Court proposes to impose such conditions that would meet the object of Section 37 of the NDPS Act.

Accordingly both the petitions are allowed and the petitioners

are directed to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to them not being required in any other case. The petitioners shall also abide by the following conditions:-

- 1. The petitioners will not tamper with the evidence during the trial.
- 2. The petitioners will not pressurize/intimidate the prosecution witness(s).
- 3. The petitioners will appear before the trial Court on the date fixed, unless personal presence is exempted.
- 4. The petitioners shall not commit an offence similar to the offence of which they are accused, or for commission of which they are suspected.
- 5. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer or tamper with the evidence.

However, it is made clear that in case, any act is done by the petitioners to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioners.

Nothing stated above shall be construed as an expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

April 07, 2022
Davinder Kumar

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