

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

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CRM-M-27698-2022
Date of decision: 04.07.2022

TEJINDER SINGH AND ANR.

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Amit Kumar Saini, Advocate
for the petitioners.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

1. The present petition has been filed under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioners under Section 167(2) of the Code of Criminal Procedure, 1973 in case bearing FIR No. 31 dated 12.04.2022 registered under Section 18-B of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as “NDPS Act”) at Police Station Khamano, District Fatehgarh Sahib (Annexure A-1).

2. As per the allegations levelled in the FIR, the patrolling party was present in a private vehicle in front of Court Complex, Khamano. At about 7.00 p.m., a scooter was seen from village Ranwa side being driven by a person wearing a turban and another turbaned person sitting as the pillion rider. Upon seeing the police party, the person driving the scooter tried to turn his scooter backwards. The

occupants of the scooter were apprehended and on interrogation, they disclosed their names as the petitioners herein. Jasveer Singh, (the petitioner No.2 herein) who was the pillion rider is stated to have been holding a black colour plastic bag between his thighs. Upon being suspicious of the accused persons carrying intoxicant substances, notice in terms of the provisions contained under the NDPS Act was served upon them to which they exercised the option of the search being conducted by a Gazetted Officer. The statements of the accused persons were accordingly recorded and the Deputy Superintendent of Police, Circle Officer, Bassi Pathana was called on the spot. The search and seizure was conducted in the presence of the Gazetted Officer. The contraband upon being weighed was found to be 2 kgs Opium.

3. Learned counsel appearing on behalf of the petitioners contends that the petitioners were arrested on 12.04.2022 by the Police, Khamano and produced before the Illaqa Magistrate on 13.04.2022. The recovered quantity being a non-commercial quantity, it was mandatory for the Investigating Agency to furnish a final report within a period of 60 days. It is contended that the application for grant of default bail was moved by the petitioners on 13.06.2022 and that the FSL report had not been filed along with the final report that had been furnished on 10.06.2022. Resultantly, in terms of order passed by this Court in the matter of “*Julfkar versus State of Haryana*” reported as 2020 (4) Law Herald 3188 and subsequently followed in the judgment of “*Vinay Kumar @ Vicky versus State of Haryana*” reported as 2021 (4) R.C.R. (Criminal) 549 and in further judgments, the final report sans the FSL report cannot be treated as complete investigation and benefit

of default bail has been extended to similarly placed accused in other FIRs. He has also placed reliance on an order passed by this Court in Criminal Revision No. 933 of 2022 decided on 01.06.2022 titled as Rohtash @ Raju versus State of Haryana.

4. Learned counsel appearing on behalf of State of Punjab however contends that the final report in the instant case had been filed on 10.06.2022 and the FSL report has since then already been furnished and the recovered contraband was found to be opium.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record with their able assistance.

6. It is not disputed that the issue as to whether the final report submitted under Section 173 Cr.P.C. sans the FSL report can be referred to as a concluded final report or would be considered as an incomplete challan has already been referred to a larger Bench by a Co-ordinate Bench of this Court vide judgment dated 16.09.2020 passed in Criminal Revision No. 1125 of 2020 and concession of bail has already been granted to the said accused persons, pending final adjudication on the issue. I find that ratio of the said judgment is applicable to the facts of the case. I deem it appropriate to enlarge the petitioners on bail to the satisfaction of the trial Court.

7. The instant petition is allowed and the petitioners are ordered to be released on bail on their furnishing requisite bail bond/surety bond to the satisfaction of the Trial Court/Duty Magistrate, concerned.

8. It is, however, clarified that the prosecution would be at

liberty to move an application for cancellation of bail/recall of this order in case the reference made to the larger Bench in Julfkar case (supra) is answered in favour of the prosecution.

9. It is made clear that the petitioners shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

10. The observation made hereinabove shall not be construed as an expression on the merits of the case and the trial Court shall decide the case on the basis of available material.

The petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

JULY 04, 2022
vishal sharma

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