

**CRM-36861-2021 in
CRA-D-165-2019**

Arwinder Singh @ Ghoga and others vs. State of Punjab

Present:- Mr. Sangram Singh Saron, Advocate,
and Ms. Surabhi Kaushik, Advocate,
for the applicant-appellant No.2.

Mr. Navdeep Chhabra, DAG, Punjab.

Second application has been filed under Section 389 Cr.P.C. seeking suspension of sentence of the applicant-appellant No.2 namely Surjit Singh @ Lucky who has undergone actual period of 6 years, 1 month and 19 days of custody against the life sentence awarded to him under Sections 121 and 121-A IPC, as per the custody certificate dated 19.07.2022 filed today in Court, which is taken on record. The first application for suspension of sentence was dismissed on 18.02.2021. The present application has been filed on 14.10.2021 and a period of 8 months had expired since then. Custody certificate would also go on to show that there is no other FIR of similar nature registered against him. The only other FIR against him is FIR No.120 under Section 52-A(1) of The Prisons Act, 1894.

It is pointed out that applicant-appellant No.2 was roped in on account of being in touch with one Arwinder Singh, who is stated to be member of terrorist organization 'Babbar Khalsa International', which had been declared illegal under the Unlawful Activities (Prevention) Act, 1967. It is pointed out that the applicant-appellant No.2 has been acquitted of the charge under Sections 10 and 13 of the said Act on account of lack of valid sanction. The abovesaid co-convict as such who had stated to have being arrested on 25.05.2016 had returned to India from Doha (Qatar) and was a

person who was stated to be enticing Sikh youth for recruitment to the said terrorist organization to wage war against India. The passport of the present applicant-appellant as such had been recovered from the almirah of the said person and on the said basis, the present applicant had been arrested 5 days later on 30.05.2016 and his mobile phone (Samsung make) (Ex.PW-18/K) also as such was recovered. It has been noted that thereafter also, two other mobile phones were got recovered from him MO3 and MO4 and other hard disks, books and flex prints that were relating to operation 'Blue Star'. It is pointed out that the incriminating material as such pertaining to terrorism which had been posted on the social websites was recovered from the co-accused Arwinder Singh, as noticed by the trial Court in para No.54 of its judgment.

It has thus not come on record that the present applicant had posted such incriminating material regarding the encouragement of the Sikh struggle for independence and to wage war and it is only on account of recovery of passport and the flex prints and other literature as such from him, the conviction has been recorded.

Reference is also made to the statement of the PW-21 DSP Mukhtiar Rai that there is no recovery in the shape of pamphlets or any writing material from the present applicant and it had come during investigation that the applicant had used pamphlets and flexes. It is accordingly submitted that the Court has not recorded any such finding as to any adverse acts of the applicant-appellant No.2 which would lead to the waging of war against Government or attempting to encourage such war, which would bring him within the purview of sentencing, as has been done by the Trial Court.

Counsel for the State has opposed the same to submit that it had been argued before the Court that he had pasted posters of the formation of Khalistan on the occasion of Hola Mohalla at Anandpur Sahib. However, counsel for the State has not been able to point out any witness stating so regarding the applicant-appellant No.2 as such pasting these posters on the said occasion.

Prima facie, it seems that no independent witness has stated that the applicant-appellant No.2 had received some money from a Thomas Cook money changer sent by one Vikram Raj r/o United Kingdom or a finding as such was recorded that this money was sent for any such purpose which was adverse to the interest of the nation. Similarly, the present applicant had also gone to PW-7 Gagandeep Singh wherein also some money had been received by him sent by one Bhagwant Singh r/o Italy.

Keeping in view the above facts and in mind that the appeal is not likely to be taken up in the near future and the applicant-appellant No.2 has undergone more than 6 years of sentence and that he was 27 years of age at the time when proceedings were initiated, it would be unfair as such to keep him in further detention.

In such circumstances, we are of the considered view that on account of the appeal not likely to be taken up in near future and keeping in mind what has come on record qua the applicant-appellant No.2 and since on the earlier occasion, a joint application had been preferred and considered by the co-ordinate Bench and dismissed, the present application is allowed. Remaining sentence of the applicant-appellant No.2 shall remain suspended during the pendency of the appeal. He be released on bail on

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furnishing of bail bonds/surety bonds to the satisfaction of CJM/Illaq
Magistrate, Shaheed Bhagat Singh Nagar.

(G.S. SANDHAWALIA)
JUDGE

20.07.2022
shivani

(VIKAS SURI)
JUDGE