

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

269 (2 & 3)

**Date of decision: 19.04.2022
CRM-M-35328-2020 (O&M)**

HARJINDER SINGHPetitioner

VERSUS

STATE OF PUNJABRespondent

CRM-M-10517-2021 (O&M)

SUNNY KAIDIPetitioner

VERSUS

STATE OF PUNJABRespondent

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

Present:- Mr. Vidit Bansal, Advocate for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. Both the petitions have been filed under Section 439 Code of Criminal Procedure, 1973 seeking Regular bail in case FIR No. 14 dated 09.02.2020 under Sections 21 and 22 of the NDPS Act, 1985 registered at Police Station Sadar Ferozepur, District Ferozepur (Annexure P-1).

2. The petition bearing CRM-M-35328 of 2020 titled as “*Harjinder Singh versus State of Punjab*” came up on 19.02.2021 when the following order was passed:

“Pursuant to the order of this court dated 24.11.2020, an affidavit of the SSP, Ferozpur, dated 31.01.2021, has eventually been filed, wherein it has been firstly stated

that as regards the two persons seen in the photograph Annexure P-3, (at a railway station), they are indeed police officials posted with the CIA staff, but they are in no manner connected with the arrest of the petitioner and in fact were out patrolling since 4.00 a.m. of 09.02.2020 till about 5.00 p.m. of that date.

As regards the call made by the petitioner from a shop near the railway station (as was contended by the learned counsel for the petitioner earlier), the SSP in his affidavit stated that in fact the shop is not near the railway station but a long distance away from it, and upon the owner thereof having been questioned, he stated that neither had the police arrested any person in his presence, nor had he made any call in that regard.

Thereafter, the antecedents of the petitioner and those who have filed affidavits in his favour (his immediate relatives), has been given by the SSP, to state that all of them are involved in various cases registered against them.

As regards the Sarpanch, who was also a 'signatory in favour of the petitioner', it has been stated he is close to the petitioner and his family and on account of that he has executed that affidavit.

As regards mobile phone numbers of the accused in the FIR, it has been stated by the SSP that though "SI Gurdev Singh had taken into police possession the mobile phones but there was no SIM card in the said mobile number".

It has been thereafter stated that no efforts were made by SI Gurdev Singh to ascertain the mobile numbers, which is a very vital piece of evidence, and for that lapse on his part, the SP (Headquarters) has recommended departmental action against him.

It has next been stated that efforts were made to

ascertain the IMEI numbers of the three mobile numbers, but the IMEI numbers of only two could be obtained, but even then the call details record of only one number could be obtained, which number was found to be switched off since 06.02.2020.

In paragraph 15 reference has been made to the call details record of the two police parties as are stated to have laid the picket (naka), and Annexure R-2 is pointed to by learned State counsel, to show that the said call details record has been detailed therein.

Learned counsel for the petitioner on the other hand, refers to an order passed by this court in the case of a co-accused of the petitioner, Amritpal Singh @ Amrit, on 08.02.2021 (in CRM-M-19954 of 2020), from which he submits that it has been recorded by this court that even the DSP (gazetted officer) who had allegedly come to the spot and in whose presence the search of the accused was made, was not found to be present, as per his call details record, in the area in question, and other than SI Gurdev Singh, no police official otherwise was found to be present in the area of Village Barike, at about 11.00 p.m. Of 09.02.2020.

With the SSP not having been made any comment whatsoever with regard to the call details record as has been annexed as Annexure R/2 with the affidavit, he is directed to be personally present in court on the next date of hearing by way of video conferencing.

In the meanwhile, he would file an affidavit pertaining to the call details record as has been annexed Annexure R-2 with his affidavit, as to how, in the aforesaid circumstances, this court should take an inference that all persons of the police party who are shown to be present in the FIR, were actually present there at the time and place that the petitioner and his co-

accused are stated to have been arrested.

Learned counsel for the petitioner at this stage submits that since the vehicle stated to have been seized at the time of the arrest of the petitioner and his co-accused (as shown in the FIR) does not belong to the petitioner, and therefore, with the petitioner also having been found by this court, prima facie at least, doubtful of being present at the spot in question with the call details record of the police officials at least so far not found to be matching with the location in the FIR, the petitioner deserves to be admitted to bail.

In view of the fact that the other co-accused have been admitted to bail by this court, the petitioner in the present petition is ordered to be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the learned trial court/CJM/Duty Magistrate concerned.

It is to be noticed here by this court that though the petitioner and his co-accused may otherwise be indulging in criminal activities, however when an FIR is prima facie itself found to be not believable (in the afore given circumstances), naturally a court would be required to go into the truthfulness, or otherwise, of what is contained in such FIR and thereafter to see whether any accused is entitled to the concession of bail or not, though otherwise he may have criminal antecedents.”

3. Subsequently, a similar order granting interim bail was also passed with respect to the petitioner Sunny Kaidi (petitioner in CRM-M-10517 of 2021) and the following order was passed on 23.11.2021

“Despite the order of this court dated November 15, 2021, noticing that two co-accused of the petitioner, Amritpal Singh alias Amrit and Gulshan Singh alias Vicky, had already been admitted to bail by this court, further

noticing that the DSP who allegedly was at the spot at the time of apprehension of Amritpal Singh, was not shown to have received/made any phone calls since 01:08 p.m. in the afternoon, with the said person having been arrested at midnight as per the FIR, the learned State counsel still seeks further time to file a reply and to address arguments thereafter.

Adjourned to 10.01.2022.

If a detailed reply by the SSP, Ferozepur, is not filed, looking into what is noticed in the order dated 15.11.2021, as also in reply to all paragraphs of the petition, the SSP shall remain personally present in court on that date of hearing itself.

In the aforesaid circumstances, since two co-accused of the petitioner have already been admitted to bail, the petitioner in CRM-M 10204 of 2020 is directed to join investigation within one week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not join the petitioner in investigation, he would appear before the learned Illaq Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

As regards the petitioner in CRM-M-10517 of 2021, i.e. Sunny Kaidi, he is too ordered to be admitted to interim bail to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate concerned, till the next date of hearing before this court."

4. Learned counsel appearing on behalf of the petitioners have contended that the petitioners do not have any incriminating

antecedents and are not required in any other case. He further submit that the main accused from whose vehicle the contraband in question had been recovered namely Amrit Pal Singh @ Amrit has been granted the concession of bail in CRM-M- 19954 of 2020 vide order dated 08.02.2021 and that the other co-accused Vicky @ Gulshan was granted concession of bail vide order dated 10.07.2020 passed in CRM-M-12458 of 2020.

5. Learned counsel vehemently argued that the case of the petitioners is on better footing as no contraband was recovered from the petitioner and that the same was recovered from other accused who have already been enlarged the concession of regular bail.

6. Mr. Karanbir Singh, AAG, Punjab has however contended that commercial quantity has been recovered from the accused persons and that the concession of bail ought not to be extended to the petitioners. It is however not disputed that the petitioners were in custody and were enlarged on interim bail by orders passed on 19.02.2021 and 23.11.2021 respectively. It is also not alleged that the petitioners have in any manner abused the concession extended to them or have indulged in any other criminal activity. He submits that even though the investigation in this case is complete and a final report has been filed, however, no evidence has been recorded so far.

7. Taking into consideration, the totality of the circumstances and the fact that investigation in the matter is already complete and the trial is take long as well as the factor that other similarly placed accused persons have already been granted concession of regular bail and even the petitioners were extended the concession of interim bail

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and connected petition.

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which is not abused or misused by them, I deem it appropriate to allow the instant petition and that the orders granting interim bail dated 19.02.2021 passed in CRM-M-35328 of 2020 titled as “*Harjinder Singh versus State of Punjab*” and order dated 23.11.2021 passed in CRM-M-10517 of 2021 be made absolute.

Petitions are accordingly allowed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 19, 2022
Vishal sharma

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