

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

(1) **CRA-D-396-2020**

Amit Gambhir

...Appellant

Versus

National Investigation Agency, New Delhi

...Respondent

(2) **CRA-D-258-2021**

Nirbhail Singh

...Appellant

Versus

State through National Investigation Agency, New Delhi

...Respondent

(3) **CRA-D-611-2021**

Jasbir Singh

...Appellant

Versus

National Investigation Agency, New Delhi

...Respondent

Date of decision:- 31.5.2022

CORAM : HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO

HON' BLE MR. JUSTICE H.S. MADAAN

Present: Mr.Prateek Gupta, Advocate and

Mr.Rahul Soi, Advocate

for the appellant in **CRA-D-396-2020**.

Mr.Raja Paramdeep Saini, Advocate
for the appellant in **CRA-D-258-2021**.

Mr.Navkiran Singh, Advocate
for the appellant in **CRA-D-611-2021**.

Mr.Satya Pal Jain, Additional Solicitor General
of India with Mr.Gaurav Pathak, Central Govt.Counsel
for the respondent – NIA in all three appeals.

H.S. MADAAN, J.

1. Vide this order, we propose to dispose of three appeals i.e.
CRA-D-396-2020 filed by appellant - accused Amit Gambhir, **CRA-D-258-2021** filed by appellant - accused Nirbhail Singh and **CRA-D-611-2021** filed by appellant - accused Jasbir Singh.
2. **CRA-D-396-2020** has been filed by appellant - accused Amit Gambhir against the order dated 22.9.2020 passed by learned Special Judge, NIA Punjab, SAS Nagar (Mohali) vide which his second petition for regular bail had been dismissed.
3. **CRA-D-258-2021** has been filed by appellant - accused Nirbhail Singh against the order dated 15.6.2020 passed by learned Special Judge, NIA Punjab, SAS Nagar (Mohali) vide which his petition

for regular bail had been dismissed.

4. **CRA-D-611-2021** has been filed by appellant – accused Jasbir Singh against the order dated 20.7.2020 passed by learned Special Judge, NIA Punjab, SAS Nagar (Mohali) vide which his petition for regular bail had been dismissed.

The aspect of delay in filing these appeals and whether the period of such delay is liable to be condoned.

5. These appeals had been preferred by the appellants under Sec.21 (4) of the National Investigation Act, 2008 (for short ‘the Act’).

6. Section 21 states:

“21. Appeals.—

(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of

the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

7. So as per the above provision, the appeal against an order passed by the Special Court refusing bail to an accused has to be preferred within 30 days from such order, but the High Court is permitted to entertain the appeals even after the said period with an outer limit of 90 days.

8. The CRA-D- 396- 2020 of Amit Gambhir has been filed on 25.11.2020 against the order dt.22.9.2020 refusing him bail. So this appeal, was filed after expiry of 30 days from the date of the order of the Special court but within 90 days from the said date.

9. The CRA-D- 258- 2021 of Nirbhail Singh has been filed on 21.5.2021 against the order dt.15.6.2020 refusing him bail. So this

appeal, was filed after expiry of 30 days from the date of the order of the Special court and also beyond 90 days from the said date. There is a delay of 371 days in filing this Appeal.

10. The CRA-D- 611- 2020 of Jasbir Singh has been filed on 27.10.2021 against the order dt.20.7.2020 refusing him bail. So this appeal, was filed after expiry of 30 days from the date of the order of the Special court and also beyond 90 days from the said date. There is a delay of 464 days in filing this Appeal.

11. The Counsel for respondents vehemently contended that all the appeals are barred by limitation and the said delay cannot be condoned since the statute i.e, the second proviso to Section 21 of the National Investigation Act, 2008 did not permit condonation of delay beyond 90 days under any circumstances.

12. The counsel for the appellants on the other hand brought to our notice the order dt.23.9.2021 passed by the Supreme Court of India in Miscellaneous Application No.665/2021 in SMW(C) No.3 of 2021 wherein the Supreme Court of India, taking into account the Covid-19 situation prevalent in the country since March,2020 passed the following order:

“I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.3.2020 till 2.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.3.2021, if any, shall become available with effect from 3.10.2021.

II. In cases where the limitation would have expired during the period between 15.3.2020 till 2.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3.10.2021. In the event the actual balance period of limitation remaining, with effect from 3.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.3.2020 till 2.10.2021 shall also stand excluded in computing the periods prescribed under sec.23(4) and 29A of the Arbitration and Conciliation Act,1996, Sec.12A of the Commercial courts Act,2015 and proviso (b) and (c) of Sec.138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceeding, outer limits(within which the court or tribunal can condone delay) and termination of proceedings.

...” (emphasis supplied)

13. The words “any laws” mentioned in para III above undoubtedly covers the National Investigation Act, 2008.

14. In view of this binding authoritative pronouncement of the Supreme Court, since the periods for filing the appeals under Sec.21(4) of the said Act against orders of the Special Court rejecting the bail applications of the appellants expired between 15.3.2020 and 2.10.2021, the appellants have a period of limitation of 90 days from 3.10.2021 even if the second proviso to Sec.21 fixed an outer limit of 90 days to condone the period of delay.

15. Therefore, notwithstanding the plea of the respondents, the appeals having been filed on 25.11.2020, 21.5.2021 and 27.10.2021, cannot be said to have been barred by limitation.

16. So we reject the plea of the respondents that the appeals are barred by limitation.

The Background facts

17. Now we shall deal with the relevant facts placed on record by the parties.

18. Briefly stated, the facts of the case as per the prosecution version are that a Pakistani truck bearing No.C-1704 having permit No.007059/2019 dated 26.6.2019 issued by Pakistan customs, had entered Indian territory at 17:40 hours on 26.6.2019. Asif Raja was

driving that truck and he off loaded 600 Polypropylene bags of consignment declared as Light Pink Rock Salt Granules in Central Warehousing Corporation, Amritsar. Such consignment had been imported by one Gurbinder Singh of M/s Kanishk Enterprises from Pakistan and exported by M/s Global Vision Impex.

19. On 29.6.2019 while consignment of light pink rock salt granules imported from Pakistan by Gurbinder Singh, Proprietor of M/s Kanishk Enterprises, Amritsar was checked by the custom authorities, it was found to contain some suspicious off white granules substances in 15 bags, amounting to 584.42 kgs. that included 532 kgs. of heroin and remaining intoxicant powder. Such contraband was seized under the provisions of Customs Act, 1962 and NDPS Act by custom authorities. Gurbinder Singh in his statement dated 30.6.2019 had disclosed that the consignment was to be delivered to Tariq Ahmad Lone son of Abdul Majeed Lone and in his statement dated 1.7.2019, he stated that truck bearing No.PB-46-M-8096 was to be used for transportation of rock salt consignment. Ajay Gupta was alleged to be involved with main conspirator Tariq Ahmad Lone and other co-accused and he used to receive the consignment of drugs.

20. Then the investigation of the case was transferred to

National Investigating Agency (hereinafter referred to as NIA) vide order dated 23.7.2019 passed by Central Government. NIA registered an FIR bearing RC No.18/2019/NIA/DLI and offences under Unlawful Activities (Prevention) Act were also added.

21. As per the contents of that FIR on 7.7.2019, SI Manmitpal Singh, SHO of Police Station Gharinda along with other police officials was travelling in a Government vehicle driven by HC Dalbir Singh and they were on official duty doing patrolling and checking of bad persons; while being present at T-point Jhabbak Atari, SI Manmitpal Singh received a secret information that Ajay Gupta son of Kewal Krishan Gupta a resident of 21-A, Krisha Nagar, Amritsar, Gurbinder Babbar, Parminder Babbar sons of Jagjir Singh, resident of Street No.8, East Hussainpura, Amritsar, Gurpartap Singh alias Love son of Parminder Singh, resident of Chandan Nagar Murgi Mohalli, Batala, Parvinder Singh alias Bittu son of Jarnail Singh, resident of Chandan Nagar Murgi Mohalla, Batala, Malkit Singh son of Budh Singh resident of Bhusse District Tarn Taran, Ashutosh Mahajan and others have formed a gang, which is involved in smuggling under the cover of doing business with Pakistan; they illegally visit Pakistan quite often and are engaged in smuggling of weapons, ammunition, gold, silver, heroin, smack, other

drugs as well as fake currency, having links with Pakistani drug smugglers, namely, Farukh Lon, Sahil Khan and Amir Nur, residents of Pakistan as well as intelligence agencies of Pakistan and such persons provide secret information relating to India to Pakistani agencies and Pakistani smugglers and if such persons were apprehended, heavy quantity of weapons, ammunition, gold, silver, heroin and other drugs besides fake currency etc. could be recovered from them.

22. The information being reliable disclosing commission of offences under Sections 411, 414 IPC, 25 of Arms Act, 3/34/20 IPC Act, 14 F Act, 21, 22, 29 of NDPS Act, 489-A, 489-B, 489-C IPC and 3/4/5/9e Official Secret Act, 1923, SI Manmitpal Singh sent ruqa to the police station, on the basis of which formal FIR was recorded. Then the police party went for conducting raids to apprehend the accused.

23. Accused Ajay Gupta was arrested by custom authorities on 20.7.2017 and by NIA on 12.9.2019. Ajay Gupta pleaded that he had valid import and export licence and had nothing to do with the contraband said to have been recovered by the custom authorities, rather it was of Gurbinder Singh and Tariq Ahmad Lone, the former having died in judicial custody. He pleaded that there was no incriminating evidence against him and when he had ordered consignment of rock salt

from Pakistan, it was not within his knowledge that any intoxicant material was brought therewith.

24. After the investigation was transferred to NIA and it progressed, it came out that the recovery effected was during one consignment although there was series of six such consignments and that Farookh Lone and Sahil from Pakistan had been sending contraband and money for import duty as well as purchase price of goods purportedly rock salt. It transpired that payment of consignment was made by Tariq Ahmad, who received money from Sahil and Farookh Lone through HAWALA channel, where Amit Gambhir played a key roll. The truck used for transportation of rock salt would deliver the consignment at Godown at Ram Tirath Road, Amritsar, which was operated by Ranjit Singh and Iqbal Singh. The owner of the truck with registration No.PB-46M-8096 was Jasbir Singh, whereas truck driver was Nirbhail Singh. During the course of investigation accused Nirbhail Singh and Jasbir Singh were also arrested in this case. Three accused aforesaid i.e. Amit Gambhir, Nirbhail Singh and Jasbir Singh had moved applications for grant of regular bail before Special Judge, NIA, Punjab but were unsuccessful, as such they have approached this Court by filing separate appeals seeking similar relief.

25. The appeals are being opposed by respondent - NIA.

26. We have heard learned counsel for the parties besides going through the record.

CRA-D-396-2020 filed on behalf of appellant/accused Amit Gambhir.

27. Learned counsel representing the appellant/accused Amit Gambhir has contended that this accused has been wrongly roped in this case and he has no concern with the drug cartel; appellant Amit Gambhir is a registered licensed currency exchanger and nominal business transactions carried out by him have been given colour of HAWALA and money laundering so as to involve him in this case; only nominal amount of foreign currency had been recovered from his house and no other incriminating material was found; there was no mention of appellant Amit Gambhir in the original charge-sheet filed though later on supplementary charge-sheet was filed in the Court implicating appellant Amit Gambhir wrongly without there being any incriminating material against him; appellant Amit Gambhir was arrested in this case on 3.1.2020 on the allegations of indulging in transactions by HAWALA sending funds to Dubai as part of proceeds from drug racket; he was wrongly denied bail by Special Judge, NIA Punjab, SAS Nagar (Mohali)

and that wrong be undone by way of acceptance of appeal and he be granted concession of regular bail.

28. In support of his contentions, learned counsel appearing for the appellant – accused Amit Gambhir has referred to various judgments detailed hereunder:

(i) *Union of India Versus K.A. Najeeb, (2021) 3*

Supreme Court Cases 713, decided by a three Judges

bench of the Apex Court, wherein it was observed that

liberty granted by Part III of the Constitution of India

covers within its protective ambit not only due procedure

and fairness but also access to justice and a speedy trial and

further when there is possibility of absence of timely trial

and the accused had suffered incarceration for a significant

period of time, the Courts would ordinarily be obligated to

enlarge accused on bail regardless of statutory restrictions

imposed on right to bail by provisions like Section 43-D(5)

of the Unlawful Activities (Prevention) Act. It was further

observed that such statutory restrictions per se do not oust

the ability of the Constitutional Courts to grant bail on

grounds of violation of Part III of the Constitution.

(ii) In judgment *Angela Harish Sontakke Versus*

State of Maharashtra (2021) 3 Supreme Court Cases 723

by the Apex Court, it was observed that seriousness of charge needs to be balanced with period of custody suffered and the likely period within which the trial can be expected to be completed.

Similar observations were made by the Supreme Court in judgment *Sagar Tatyaram Gorkhe and another Versus State of Maharashtra (2021) 3 Supreme Court Cases 725.*

29. On the other hand, learned counsel for the respondent - NIA have offered vehement opposition to such prayer made by learned counsel for the appellant Amit Gambhir. According to them, the appellant Amit Gambhir is main HAWALA operator, who was connected to persons outside India through telephone and he had been receiving and transferring money at the instance of Tariq Ahmad Lone, who is based in Pakistan and is kingpin of the racket pushing narcotics from Pakistan into India. According to him, during the search of residential house of appellant Amit Gambhir several incriminating articles in the form of mobile phones, 3 Sim cards, hard-disk, laptop and currency notes, both

Indian as well as foreign, were recovered showing that he is a part of well organized gang engaged in drug peddling and narco terrorism; appellant Amit Gambhir used a Sim card in the name of some other person to keep contact with his Pakistani counterparts so as to conceal his identity, and during the course of investigation, it has come out that he had sent an amount of around Rs. 4 cores 20 lakhs, which were proceeds from contraband to Dubai on various occasions; he was hiding information for a long time and was caught from financial trail in the form of slips of transactions retrieved from his mobile phones and call records provided by devices and other witnesses. In that way, he was a vital link for fund transfer between India and Pakistan and has been playing crucial and important role in narco terrorism being carried out by Pakistan based smugglers putting the safety and integrity of India in danger and posing peril to the lives of many innocent persons by making drugs available to them and getting them hooked to consumption of drugs and such type of person if released on bail in all likelihood would indulge in criminal activities, again including drug peddling by financing it and doing HAWALA transactions. The involvement of the appellant Amit Gambhir can be inferred from the fact that when consignment of heroin was intercepted by the Customs in this case, and he had fled to

Thailand and then went to several other countries remaining there for more than 3 months.

30. With regard to the judgments referred to by learned counsel for the appellant/accused Amit Gambhir, according to learned counsel representing respondent – NIA, those do not come to rescue of the appellant/accused in view of peculiar facts and circumstances of this case and the quantity of incriminating evidence collected by the investigating agency against him and grave and serious nature of allegations against such appellant/accused of indulging in nefarious activities endangering the security and integrity of the country.

31. After pondering over the contentions put forward by learned counsel for the appellant and learned counsel for respondent – NIA, we find that the allegations against the appellant Amit Gambhir are indeed very grave and serious of being a part of an international gang indulging in narco terrorism. Such type of persons, who threaten the integrity and security of India besides harming its financial interests need to be dealt with sternly so that persons thinking of indulging in such type of criminal acts are deterred from doing so.

32. The investigating agency has been able to collect

substantial incriminating evidence against the appellant Amit Gambhir especially in the form of documents showing his involvement in the racket. The apprehension expressed by the counsel for the respondent – NIA that in case the appellant Amit Gambhir is granted concession of bail, there is every likelihood of his absconding in the process prolonging the trial and further trying to tamper with the prosecution evidence by giving threats or inducement to the prosecution witnesses, cannot be brushed aside in a light manner.

33. No doubt the personal liberty of a citizen is of great value as has been observed in the judgments referred to by learned counsel for the appellant and discussed supra. But then the Court has to strike balance between such personal liberty and gravity and seriousness of the allegations with regard to criminal acts attributed to that person. Such personal liberty can certainly be curbed by keeping the person concerned behind bars if it comes out that release of such person on bail would pose a danger to the peace and tranquility in the society at large and may imperil the national security and integrity.

34. We find that keeping in view the facts and circumstances of the case the release on bail of Appellant – accused Amit Gambhir at this stage is not warranted.

35. In our view, the order passed by the trial Court dismissing the bail application is a well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein, which may call for interference by this Court while exercising appellate jurisdiction.

36. Hence, **CRA-D-396-2020 filed on behalf of appellant/accused Amit Gambhir stands dismissed.**

CRA-D-258-2021 filed by appellant/accused Nirbhail Singh.

37. Learned counsel for the appellant/accused Nirbhail Singh has submitted that no contraband was recovered from the appellant/accused; the whole case is based upon presumptions and conjectures with no incriminating evidence against him being available on record; two of the co-accused of the appellant Nirbhail Singh have been granted concession of regular bail; co-accused Ajay Kumar has been granted bail by Special Judge, NIA Punjab, SAS Nagar (Mohali) vide order dated 25.11.2019, copy of order being Annexure A-3, whereas other co-accused Sandeep Kaur had been admitted to bail by a Division Bench of this Court while accepting CRA-D-880-2019 decided on 13.1.2021, and therefore the appeal of the appellant/accused Nirbhail Singh be accepted.

38. Whereas learned counsel for the respondent – NIA have vehemently opposed the request.

39. It is further contended that appellant Nirbhail Singh – driver along with co-accused Jasbir Singh - owner of the truck had been using the truck for transportation of narcotics with regard to all the consignments. The truck in question was recovered from the possession of appellant Nirbhail Singh when he was arrested in this case; as a matter of fact, appellant/accused Nirbhail Singh along with Jasbir Singh had been transporting the rock salt consignment from Atari Border to Godown at Ram Tirath Road, Amritsar on instructions of co-accused Ranjeet Singh @ Rana. Learned State counsel has referred to statement of Jasbir Singh (accused) recorded under Section 67 of NDPS Act and 108 of Customs Act as well as statement of appellant/accused Nirbhail Singh stating that such statements are admissible. Therefore, the appellant/accused Nirbhail Singh, being part of the drug racket indulging in narco terrorism, does not deserve to be granted concession of bail.

40. After considering the rival contentions, we find that sufficient incriminating material with regard to this appellant Nirbhail Singh is lacking.

41. Appellant Nirbhail Singh in his statement to the custom authorities, though admitted driving truck bearing registration No. PB-46-M-8096 belonging to Jasbir Singh transporting the rock salt, but from his statement no inference can be drawn that he was aware of any contraband being mixed with the rock salt. Even from the statement of Jasbir Singh made during investigation of the case, it cannot be *prima facie* inferred that appellant Nirbhail Singh was aware of contraband being transported in the truck driven by him. Rather in his statement on 5.7.2019 to a specific question whether Jaswant Singh @ Nirbhail Singh @ Mama driver used to accompany him to godown of Ranjeet Singh @ Rana, he replied that he used to drop Nirbhail Singh driver at some distance as Ranjeet Singh @ Rana had instructed him not to show godown to anyone else. As it comes out from the documents, after unloading rock salt at the godown of Rana, the contraband used to be separated and rock salt disposed of. Therefore, it cannot be taken *prima facie* that Nirbhail Singh could have come to know about the drugs being transported along with the rock salt to godown of Rana.

42. Things would have been different if consignment of rock salt along with contraband had have been seized *while being transported* in the truck in question *being driven* by appellant Nirbhail Singh. Then

he might have been attributed conscious possession but not otherwise simply for the reason that he had transported the rock salt from ICP Attari up to godown of Ranjeet Singh @ Rana *on previous occasions*.

43. The counsel for the respondents could not satisfactorily explain how the appellant Nirbhail Singh can be presumed to have driven the truck on previous occasions with contraband in it when admittedly the truck was not intercepted on such occasions.

44. The argument advanced by learned counsel for the appellant Nirbhail Singh that the case of prosecution with regard to appellant/driver Nirbhail Singh is based more upon suppositions and conjectures rather than solid evidence seems to have merit.

45. The appellant Nirbhail Singh is in custody since 6.7.2019. Though challan against the appellant Nirbhail Singh and his co-accused has been filed in the Court but the things are moving at very slow pace inasmuch as charge is yet to be framed in this case. The prosecution is said to have cited 299 PWs.

46. Considering the slow pace at which the proceedings are moving, in all likelihood it will take several years for completion of prosecution evidence. Although in terms of Section 19 of NIA Act,

2008, the trial is required to proceed on day to day basis, but the things at ground level are otherwise.

47. In judgment **Gangadhar alias Gangaram Versus State of Madhya Pradesh (2020) 9 Supreme Court Cases 202**, in para No.10 of the judgment, it was observed as under:

“10. The stringent provisions of the NDPS Act, such as Section 37, the minimum sentence of 10 years, absence of any provision for remission do not dispense with the requirements of prosecution to establish a prima facie case beyond reasonable doubt after investigation, only whereafter which the burden of proof shall shift to the accused. The gravity of the sentence and the stringency of the provisions will therefore call for a heightened scrutiny of the evidence for establishment of foundational facts by the prosecution.”

48. As regards the order passed by Special Judge, NIA Punjab, SAS Nagar (Mohali) dismissing the application for regular bail filed by Nirbhail Singh, we hold that the said order is not based upon proper appraisal of the facts and circumstances of the case and correct interpretation of law. The same is not sustainable and is liable to be set aside by way of acceptance of the appeal.

49. In **Union of India Versus K.A. Najeeb** case (supra), it has been observed that when timely trial is not possible and accused has

undergone imprisonment for considerable time then statutory restrictions imposed on right to bail by provisions like Section 43-D(5) of Unlawful Activities (Prevention) Act would not come in the way of granting bail.

50. With regard to the objection raised on behalf of NIA that on account of recovery involved being more than commercial quantity, bar of Section 37 of NDPS Act comes into play and judgment referred to by learned counsel for the NCB i.e. *State (GNCT of Delhi) Narcotics Control Bureau Versus Lokesh Chadha, 2021(2) RCR(Criminal) 272*, a Division Bench of this Court headed by one of us (M.S.Ramachandra Rao, J.) in judgment titled *Harmesh Singh Versus Intelligence Officer Directorate of Revenue Intelligence, Sub-Unit, M I/C Green Avenue, Amritsar* passed in CRM-43083-2021 in CRA-D-1116 - DB of 2016, decided on 31.1.2022 had considered the law on the subject in detail and held that the Supreme Court has itself given primacy to the right to speedy trial/speedy disposal of appeals flowing from Article 21 and not to Section 37(1)(b)(ii) of the Act. Therefore, in our view bar of Section 37 of NDPS Act does not come into play while considering the prayer of appellant for releasing him on regular bail.

51. Therefore, in our view appellant/accused Nirbhail Singh deserves to be granted concession of regular bail by way of acceptance

of the appeal.

CRA-D-611-2021 filed by appellant/accused Jasbir Singh.

52. Learned counsel for the appellant/accused Jasbir Singh has contended that though Jasbir Singh is owner of the truck in question, but the truck was not intercepted while transporting drugs along with rock salt and the prosecution wants the Court to presume that contraband would have been transported along with the rock salt from ICP Attari up to godown of Rana on earlier occasions without their being sufficient evidence to show that fact. Furthermore, there is nothing on record to point out that Jasbir Singh, being aware of the drugs being transported along with the rock salt, willingly allowed his truck to be used for that purpose and he was a participant in the conspiracy to do drug peddling.

53. Whereas learned counsel for the respondent - NIA has contended that such appellant Jasbir Singh was willing participant in the transportation of drugs in his truck having complete knowledge of the drugs being transported along with the rock salt. His involvement can be inferred from the fact that though the destination of the rock salt imported from Pakistan was mentioned to be Batala in the way bills but the consignment used to be delivered in the godown of Rana at Amritsar.

Therefore, appellant Jasbir Singh does not deserve any leniency by way of his release on bail.

54. After giving a thoughtful consideration to the rival contentions, we find that Jasbir Singh was arrested in this case on 1.7.2019. He had got his statement recorded with the custom authorities. From the perusal of his statement and other evidence collected by the investigating agency, no conclusion can be reached that Jasbir Singh was aware of the fact that contraband used to be transported along with the rock salt in his truck.

55. Though some suspicious circumstances with regard to his conduct can be found out, but those cannot be taken to show that he was a willing participant in the drug peddling.

56. Rather it comes out that sons of Jasbir Singh, namely, Gurpreet Singh and Harpreet Singh are involved in drug peddling.

57. If we see statement of Ranjeet Singh, got recorded with the Custom authorities, it comes out that Jasbir Singh was told that he was to transport rock salt from ICP Attari to a godown, to which he had agreed. It also comes out that it was Ranjeet Singh and Shera, who used to open earmarked bags and take out packets of heroin weighing 1 kg each from

that bags. He nowhere stated that it was being done in presence of Jasbir Singh. Furthermore, he stated that son of Jasbir Singh used to be given packets of heroin, but he did not say anywhere that Jasbir Singh was given packets of heroin.

58. So *prima facie* no inference can be drawn that Jasbir Singh along with his driver Nirbhail Singh had transported the consignment of rock salt containing heroin on previous five occasions and were to transport it for the sixth time as well, but for the consignment being intercepted by the custom officials at Attari Border.

59. With regard to Jasbir Singh instructing Nirbhail Singh on 2.7.2019 on telephone not to bring the truck to Amritsar from Bikaner since there was some problem with it, that also does not by itself shows any participation of Jasbir Singh in drug transportation.

60. The order declining bail to him by Special Judge, NIA Punjab, SAS Nagar (Mohali) is not convincing and cannot stand judicial scrutiny.

61. As already observed while discussing the case of appellant Nirbhail Singh, we noticed that the trial is moving at extremely slow pace and there is no likelihood of its conclusion in near future.

62. Therefore, in our view appellant/accused Jasbir Singh also deserves to be granted concession of regular bail by way of acceptance of the appeal.

63. **Therefore, CRA-D-258-2021 filed by appellant Nirbhail Singh and CRA-D-611-2021 filed by appellant Jasbir Singh are allowed.** They are ordered to be released on bail in this case during the pendency of the trial, subject to their furnishing bail bonds and surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate, SAS Nagar (Mohali), on following conditions:

(i) they shall appear in the Court on each and every date of hearing;

(ii) they shall not give any threat or intimidation to the prosecution witnesses;

(iii) they shall not leave India without prior permission of the Court; and

(iv) they would get their presence marked in the local police station on last day of the month at 10:00 a.m. and would give in writing that they have not committed any crime in the intervening period.

64. Appellants Nirbhail Singh and Jasbir Singh are also directed

to surrender their passports if they hold those otherwise to furnish affidavits in that regard.

65. In addition to that the trial Court may impose any term and condition found suitable to ensure that the appellants Nirbhail Singh and Jasbir Singh do not abscond and interfere in the trial.

66. In case the appellants Nirbhail Singh and Jasbir Singh violate any term and condition on which the bail has been granted to them, the prosecution would be entitled to apply for cancellation of bail.

67. Nothing stated above shall be construed as a final expression of opinion on the merits of the contentions of either parties and the Special Court shall decide the matter uninfluenced by any observations made herein.

(M.S.RAMACHANDRA RAO)
JUDGE

(H.S.MADAAN)
JUDGE

31.5.2022
Brij

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No