

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

I. **CRM-M-42356-2020**
Date of decision: March 29, 2022

Malkit Singh @ Fauji
Sate of Punjab

Versus

....Petitioner
....Respondent

II. **CRM-M-12350-2021**

Harpreet Singh
State of Punjab

Versus

....Petitioner
....Respondent

III. **CRM-M-35335-2021**

Gurlal Singh
State of Punjab

Versus

....Petitioner
....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate
(in CRM-M-42356-2020)

Mr. D.S. Pheruman, Advocate
(in CRM-M-35335-2021)

Mr. Vishwjit Bedi, Advocate
(in CRM-M-12350-2021)
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

By this common order, the Courts intends to decide the above mentioned criminal writ petitions.

Prayer in this petition is for grant of regular bail in case FIR No.82 dated 8.5.2019 under Sections 3, 4, 5 and 9 of the Official Secrets Act, 1923 and Section 120-B of IPC and (Sections 21, 29 of the NDPS Act, 1985 added subsequently), registered at Police Station Gharinda, Amritsar Rural, District Amritsar.

This is the second petition (CRM-M-42356-2020) filed on behalf of petitioner-Malkit Singh @ Fauji, as the earlier one, i.e. CRM-M-48002-2019 was dismissed as withdrawn on 27.2.2020.

The new ground for filing the present is that the petitioner is in custody for the last more than 2 years and till date, no prosecution witness has been examined.

Brief facts of the case are that the FIR was registered by SI Prabhjit Singh that while on patrol duty, he got a secret information that petitioner-Malkit Singh @ Fauji, who was serving as a Sepoy in Indian Army and was posted at Jammu and Kashmir had developed relationship with Pakistani smugglers and secret agencies of Pakistan and he was sharing important information of Indian Army regarding training; location of the important establishments, etc. on Whatsapp or e-mail of the secret agencies of Pakistan.

It is further stated that he is coming to meet his accomplice in Amritsar for supplying the confidential documents and can be apprehended with the secret documents, like photographs, maps, etc. The information was brought to notice of DSP, Sub Division, Attari and the FIR was registered by sending a ruqa to the Police Station. Later on, the petitioner was arrested on 9.5.2019 and from him, a manual of Indian Army regarding the training, photographs and documents of communication of Indian Army, training exercises, map of Army Cantt., and three mobile phones were recovered. During investigation, he suffered a disclosure that on 14.5.2019 that in one phone he was having a Pakistani SIM, which he had concealed at his residence and another mobile phone having Pakistani SIM was given to his accomplice Gajjan Singh. Thereafter, one mobile phone was recovered and Gajjan Singh was arrested and 10 grams of heroine along with car was recovered from him. Gajjan Singh made a disclosure that he along with Malkit Singh @ Fauji were doing business of selling heroine by taking consignment from Pakistan and got recovered one mobile phone having Pakistani SIM. Again, the petitioner in another disclosure told that one Army person Princedee Singh was also doing illegal work with him and were in contact with a Pakistani smuggler Akib Ali Nisar and were sharing information of places of Indian Army. Princedee Singh was nominated in the case and was arrested and some documents and mobile phones were recovered and in disclosure he has admitted his aforesaid Pakistani smugglers and conversation on Whatsapp.

It is stated that a consignment of 5 packets of heroine was sent by Pakistan, 3 packets were taken by him and remaining were taken by Baba Saraj and Akib Ali Nisar, who further told to contact Hatish Chopra @ Kaku

and sent Rs.24 lacs,, which he has paid to him. This accused further disclosed that he is also in contact with other Pakistani smuggler Akash Bular on Whatsapp, who told him that he had sent heroin to Gurmaj Singh-petitioner and he should handover Rs.8 lacs to Gurmaj Singh on receiving the heroine. Princydeep Singh further disclosed that he has transferred Rs. 8 lacs in the account of Gurmaj Singh's wife and took a packet of heroin from him and sold it to co-accused Harpreet, who gave him Rs. 8 lacs, which he has concealed in his living room. On the basis of the above disclosure, Hatish Chopra @ Kaku, Gurmaj Singh and Harpreet Singh and Akib Ali Nisar were nominated and Rs. 8 lacs were recovered from Malkit Singh @ Fauji. After arrest of Hatish Chopra @ Kaku, mobile phones were recovered from him.

Counsel for petitioner-Malkit Singh @ Fauji has argued that the petitioner is in custody for the last 2 years .. and the maximum punishment under the Official Secret Act is three years and no purpose will be served for keeping him in custody as he is in long custody and no PW has been examined so far.

Counsel for petitioner-Gurmaj Singh has argued that under Section 13(3) of the Official Secret Act, no Court can take cognizance of an offence unless upon complaint made by an order or an authority of the appropriate government or an officer duly appointed by the government. Therefore, it will be a matter of trial whether the registration of the FIR against the appellant is in accordance with law. Counsel for petitioner- Gurmaj Singh has argued that his name has surfaced in the disclosure statement of Malkit Singh @ Fauji, who made a disclosure after 12 days of his arrest. It is argued that Malkit Singh @ Fauji remained on police remand from the date of his arrest, i.e.

8.2.2019 to 14.5.2019, however, nothing came against the petitioner. Later on, his disclosure dated 20.5.2019 was recorded in which he has named the petitioner.

It is stated that the petitioner is in custody since 9.6.2021 and the recovery has been planted on him. Counsel for the petitioner has submitted that the amount which has been deposited in the account of the wife of the petitioner is on account of the fact that the petitioner and his wife has to travel abroad. Counsel has further argued that the petitioner is in long custody and accept the allegation of transferring the money, no contraband was recovered from him.

Counsel for petitioner-Harpreet Singh has argued that his name surfaced in the disclosure statement of Princedeeep Singh and after his arrest, nothing has been recovered and nothing has been recovered. It is also argued that there is no allegations against the petitioner, qua the Official Secret Act.

Learned State counsel, however, on the basis of the report under Section 173 Cr.P.C. has submitted that all the petitioners, in conspiracy with each other and on the basis of the reply and affidavit of SHO, Police Station Garinda Amritsar (Rural) after verifying the facts and investigation has stated that all the accused persons were actively involved and petitioner-Malkit Singh @ Fauji was nominated in the secret information, which was followed by the recovery of the various secret documents of Indian Army. It is also submitted that even two mobile phones having SIM cards of Pakistan were also recovered from him and on his disclosure firstly Gajjan Singh was nominated and from him also two mobile phones along with 10 grams of heroine, were recovered. Another accused Princedeeep Singh, was also nominated by the

petitioner Malkit Singh @ Fauji and upon his arrest, mobile phones and prohibited documents of Army Training Manual were recovered. Again, in the disclosure statement, it has come that the accused persons were in touch with two Pakistani smugglers on their Whatsapp phone and had brought packets of heroine and have even exchanged huge amount of money in lacs.

It is also stated that petitioner-Harpreet Singh is in custody since 30.10.2020 and challan against all the accused persons have already been submitted.

The disclosure of Malkit Singh @ Fauji reads as under :-

“I contacted and discussed in December, 2018 with Pakistani smuggler Akeeb Ali Nishar on Whatsapp by saying that to send the packets of heroin through border which were 05 packets out of which 03 packets of heroin came to my share and the remaining has been taken away by the Baba Saraj and Akeeb Ali Nishar has asked me that you be contact with Hatish Chopra @ Kaku son of Sunil Kumar Chopra, resident of Kothi No.37, IMA Colony, Akash Avenue, Amritsar on his Mobile No.78376-57862. After contacting the same, Rs.24 lacs be handed over to Hatish Chopra @ Kaku and thus, on reaching the house of Hatish Chopra @ Kaku, I paid Rs.14,50,000/- to him and thereafter, again I went to the house of Hatish Chopra and I paid Rs.10 lacs to him who is running the business of shawls and in lieu thereof I used to send the shawls to Pakistan businessmen and the amount thereof was used to sent through Pakistan smugglers.

Besides that, in the month of March, 2019, one Pakistani smuggler namely, Akshar Bular resident of Daud Bhatiyar, Pakistan who contacted me through Whatsapp to whom I asked that four packets of heroin be sent to me who replied to me that they have already sent few packets of heroin went sent to Gurlal Singh resident of Dhanoye Khurd who is our friend and we used to send the packets of heroin to him and thus, you should contact him and get back the packets of the heroin and out of the same the amount of Rs.08 lacs be given to Gurlal. Thus, on the same day, as per the direction of Pakistani smuggler as well as friend of mine, I met Gurlal son of Santokh Singh, caste Jat, resident of Dhanoye Khurd and reached his house and, thereafter, I contacted Gurlal Singh who is friend of Pakistani smuggler and he asked me first of all you pay me Rs.08 lacs and I shall hand over the packet of heroin upon which I withdraw the amount from my bank bearing Account No.201492205692, State Bank of India Branch, Atari District Amritsar from where, he withdraw the amount from the account of 'Gurpreet Kaur wife of Gurlal Singh' resident of Dhanoye Khurd from his account No.10771000005471, Punjab and Sind Bank, branch Atari, District Amritsar and the same was transferred to her account and this amount has been transferred at the instance of Gurlal Singh and in lieu thereof, Gurlal Singh gave one packet of heroin to me and I gave this packet of heroin further to

‘Harpreet Singh’ son of Gajjan Singh, Jat, resident of village Alla Baksh and in lieu thereof I have to take the money of Rs.12,50,000/- from ‘Harpreet Singh’ which I have to collect amount from Harpreet Singh and thus, I got Rs.08 lacs in lieu of the heroine; Thus, the whole amount which I have collect in my polythene bag and put the same in my residential room in my house which I have kept concealed the same by digging out the earth and kept the heroin therein to which I have the knowledge which can be get it recovered by pointing out at my instance. This, disclosure statement has been recovered upon which the aforesaid accused as well as the other witnesses has put their signatures thereon.”

After hearing learned counsel for the parties and looking into the serious allegations against the petitioners, I find no ground to grant the concession of regular bail to them.

Dismissed.

March 29, 2022
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO