

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on : 23.09.2022

Pronounced on : 26.09.2022

1. CRM-M-42953-2022 (O&M)

Harpreet Singh

... Petitioner

Vs.

State of Punjab

... Respondent

2. CRM-M-42957-2022 (O&M)

Gurlal Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vipul Jindal, Advocate
for the petitioner (in both cases).

Mr. S.S. Goripuria, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

This order shall dispose of both these 2nd petitions for grant of regular bail to petitioners Harpreet Singh and Gurlal Singh, in FIR No.82 dated 08.05.2019 under Section 3, 4, 5 & 9 of Official Secrets Act, Section 120-B IPC

and Sections 21, 27-A, 29 of NDPS Act, registered at Police Station Gharinda, Amritsar Rural, District Amritsar; earlier petitions were dismissed on merits vide order dated 29.03.2022.

Learned counsel for the petitioners submits that new grounds for filing these second petitions are that challan has been presented and except the disclosure statement of co-accused Malkit Singh @ Fauji, no other evidence has come on record against the petitioners; they have additionally undergone more than 06 months more judicial custody; trial is yet to start, therefore, it will take long time in conclusion of the trial and three co-accused of the petitioners namely Gajjan Singh, Princedeeep Singh and Hatish Chopra @ Kaku have already been granted the concession of regular bail by the Additional Sessions Judge, Amritsar.

Brief facts of the case, as noticed in the earlier order, are that the FIR was registered by SI Prabhjit Singh with the allegations that while on patrol duty, he got a secret information that 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, he 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 statement that on 14.5.2019, 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, Malkit Singh @ Fauji 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 the disclosure statement, he has admitted the fact regarding conversation through Whatsapp with aforesaid Pakistani smugglers. 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 Gurmial Singh and he should handover Rs.8 lacs to Gurlal Singh on receiving the heroine. Princedeeep Singh further disclosed that he has transferred Rs. 8 lacs in the account of Gurlal Singh's wife and took a packet of heroin from him and sold it to co-accused Harpreet, who gave him Rs.8.00 lacs, which he has concealed in his living room. On the basis of the above disclosure, Hatish Chopra @ Kaku, Gurlal Singh and Harpreet Singh and Akib Ali Nisar were nominated and Rs.8.00 lacs were recovered from Malkit Singh @ Fauji. After arrest of Hatish Chopra @ Kaku, mobile phones were recovered from him.

Learned counsel for the petitioners has argued that during the investigation, both the petitioners were nominated on the basis of disclosure statement of main accused Malkit Singh @ Fauji. It is further submitted that in pursuance to the alleged disclosure statement of co-accused, neither any narcotic substance nor money was recovered from either of the petitioner, therefore, disclosure statement of co-accused is yet to test the admissibility at the time of final disposal of the case. Learned counsel has relied upon judgment of the Hon'ble Supreme Court passed in **SLP (Crl.) No.5458/2021 (Shreyansh Jhabak Vs. The State of Chhattisgarh)**, decided on 20.09.2021, wherein, in a case under NDPS Act, noticing the fact that no recovery has been effected from the accused and he has been implicated on the basis of statement made by co-accused under Section 164 Cr.P.C., while granting bail, the following observations were made: -

“The High Court arrived at the prima facie conclusion that the petitioner was habitual offender only on the basis of statements of

co-accused, which would be inadmissible. There were no materials against the petitioner apart from the statements of the co-accused.

In the circumstances, we deem it appropriate to grant bail to the petitioner on stringent conditions to be imposed by trial Court, including but not limited to the conditions with regard to sureties, bail bonds etc. Apart from reporting to the investigating authority on a regular basis, the petitioner shall not leave the jurisdiction of the trial Court without leave of the Court.”

Learned counsel has further submitted that petitioner Harpreet Singh is in custody for the last 01 year, 10 months and 22 days, whereas petitioner Gurlal Singh is in custody for the last 01 year, 03 months and 13 days and has relied upon another order of the Hon’ble Supreme Court dated 04.08.2022 passed in **SLP (Crl.) No.4173/2022 (Shariful Islam @ Sarif Vs. The State of West Bengal)**, wherein, in similar circumstances, considering the fact that an accused is in custody for the last 01 year and 06 months and there was no likelihood of completion of the trial in near future, regular bail was granted.

Learned counsel has also relied upon the order dated 02.05.2022 passed in **SLP (Crl.) 2449/2022 (Kumudu Gurunad Vs. State of Madhya Pradesh)**, wherein, while dealing with a case under the NDPS Act, the Hon’ble Supreme Court, with regard to allegation of the prosecution that accused was found having credit entries to a tune of Rs.25.00 lacs in his bank account, though his earning capacity was much less and as per the prosecution, the said amount was used for the business of contraband, granted the concession of bail during pendency of the trial.

Learned counsel has next argued that as per report submitted under Section 173 Cr.P.C., only allegation against the petitioners is that they are indulged in the business of illegal trafficking of contraband, therefore, applicability of Section 27-A of NDPS Act is seriously questionable, when no recovery of narcotics is effected from them. Learned counsel has referred to a judgment of the Hon'ble Supreme Court in **SLP (Crl.) No.9470 of 2021 (State of West Bengal Vs. Rakesh Singh @ Rakesh Kumar Singh)**, wherein it is held that the accused is entitled to bail on stringent conditions. In the said case, the Hon'ble Supreme Court observed that since the accused are not previously involved in any other case under NDPS Act, they can be granted bail.

Learned counsel has also argued that in the absence of any recovery from the petitioners, rigor of Section 37 of NDPS Act does not apply in the present case and considering long custody of the petitioners, they may be granted the concession of regular bail. It is further argued that against petitioner Gurlal Singh, allegation is that he received an amount of Rs.8.00 lacs in the account of his wife from co-accused, who is already on bail, however, the said amount was allegedly received on 23.03.2019, whereas the incident pertains to 21.05.2019, therefore, the same is not relating to the alleged drug business. It is next submitted that in view of the judgment in **Shariful Islam @ Sarif's** case (supra), the petitioners can be granted bail on imposing stringent conditions.

Learned counsel has lastly argued that against both the petitioners, there is no allegation of commission of any offence under Official Secrets Act, as the allegations in this regard are only qua co-accused Malkit Singh @ Fauji

and allegation against the petitioners, even as per disclosure statement of Malkit Singh @ Fauji or Gajjan Singh (who is on bail) are with regard to commission of offence under the NDPS Act.

Learned State counsel has filed the custody certificates of both the petitioners in the Court today and has not disputed the custody period undergone by the petitioners, however, it is submitted that petitioner Harpreet Singh is not involved in any other case, though petitioner Gurlal Singh is involved in one case under Arms Act and a case under NDPS Act relating to the year 2014.

On a Court query, learned State counsel could not dispute the fact that after submission of final report under Section 173 Cr.P.C., except the disclosure statement of co-accused Malkit Singh @ Fauji or Gajjan Singh, no other evidence has come on record against the petitioners and after their arrest, no narcotic substance or drug money was recovered from them.

Learned State counsel could not dispute that three co-accused of the petitioners, namely Gajjan Singh, Princdeep Singh and Hatish Chopra @ Kaku have already been released on regular bail by the Additional Sessions Judge, Amritsar. It is also not disputed that all these persons were also nominated in the FIR on the basis of disclosure statement of co-accused Malkit Singh @ Fauji, who was arrested by the police regarding commission of offence under Official Secrets Act. It is further not disputed by learned State counsel that the trial is yet to commence and no prosecution witness has been examined so far.

After hearing learned counsel for the parties, without commenting anything on merits of the case and considering the fact that the petitioners are in long custody; trial is yet to commence; as per report under Section 173 Cr.P.C., there is no allegation against the petitioners qua commission of offence under the Official Secrets Act and allegations are under NDPS Act; no recovery is effected from both the petitioners, after their arrest; aforesaid three co-accused of the petitioners, who were also nominated in the FIR on the basis of disclosure statement of co-accused Malkit Singh @ Fauji, have already been released on bail; conclusion of the trial will take some time and also in view of judgments of the Hon'ble Supreme Court in **Shreyansh Jhabak's** case (supra), **Shariful Islam @ Sarif's** case (supra) and **Kimudu Gurunad's** case (supra), both these petitions are allowed and petitioners Harpreet Singh and Gurlal Singh are directed to be released on regular bail subject to furnishing their bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate, concerned.

The petitioners will surrender their passports and will not travel abroad without prior permission of the Court and will appear before the Investigating Officer once a month.

A photocopy of this order be placed on the file of connected case.

[**ARVIND SINGH SANGWAN**]
JUDGE

26.09.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No