

CRR No.1363-2023

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR No.1363-2023

Date of decision: 03.10.2023

Gurjashanpreet Singh and another

....Petitioners

V/s

The State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ramandeep Singh Gill, Advocate for the petitioners.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Revision petition is directed against an order dated 27.04.2023 by learned Judge, Special Court, SAS Nagar (Mohali) in bail application No.1223 of 2023 titled 'AnmoldeepSoni and another Vs. State of Punjab', whereby petitioners' bail application under Section 167(2) Cr.P.C. in case FIR No.6 dated 25.08.2023, registered under Sections 153, 153-A, 212, 216 and 120-B of Indian Penal Code, 1860 (for short 'IPC'), Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), and Section 25 of the Arms Act. 1959 (for short 'Arms Act') at Police Station, State Special Operation Cell (SSOC), Mohali, was dismissed.

2. Per prosecution case, on 24.08.2022, on secret information, the police arrested accused Gurlal Singh alias Lalialong with co-accused, who were involved in supplying illegal arms and ammunitions and funding, being follower of Khalistan separatist, with an intent to create disturbance in the State of Punjab at the instance of Pakistani Agency ISI and target leaders of religious organizations and political leaders. On the disclosure statement of accused Sukhraj Singh, AnmoldeepSoni (petitioner No.2) was nominated as an accused and 103 grams of heroin was recovered. He was arrested on 09.09.2022. On his

disclosure statement,petitioner No.1, namely,Gurjashanpreet Singh was nominated as an accused and was arrested on 20.09.2022. He is in custody since that date.

3. Learned counsel contends that in the present case, the police hassubmitted final report under Section 173(2) Cr.P.C. without accompanied by report of FSL, which amounts to incomplete investigation report, as envisaged under Section 173(5) Cr.P.C. and therefore, petitionersare entitled to default bail. Petitioners applied for default bail before learned Judge Special Court, SAS Nagar (Mohali), but the same was dismissed vide order impugned herein. He argues that even otherwise, alleged recovery has been planted on petitioners. Petitioners have thus been falsely implicated. Petitionersare totally innocent. Petitioners have indefeasible right to be released on bail as per provisions of section 167(2) Cr.P.C. read with Section 36A (4) of NDPS Act.

3.1 He also refers to a Division Bench Judgment of this Court in case **Ajit Singh alias Jeeta and another vs. State of Punjab**¹ to contend that report of chemical examiner must be mandatorily included in the final report under Section 173 Cr.P.C. and in the absence of the same, challan would be incomplete and Court is not competent to take cognizance of the offence in an incomplete challan.

3.2 Learned counsel representing the petitioners submits that petitioner No.1 was arrested on 20.09.2022 on production warrant and petitioner No.2 was arrested on 09.09.2022 whereas report under Section 173(2) Cr.P.C. without FSL report was filed on 05.11.2022. As per Sections 21 and 36 of the NDPS Act, prosecution has to file the complete investigation report along with FSL report within 60 days, whereas in the present case, FSL report was submitted by prosecution on 20.04.2023.

3.3 He also submits that nothing is to be recovered now from the petitioners and they are not required for further custodial interrogation. There is

¹ Criminal Revision No.4659-2015 decided on 30.11.2018

nolikelihood of petitioners tampering with evidence and/or influencing prosecution witnesses.

4. Per contra, learned State counsel submits that petitioners have been charged for various offences under IPC and Arms Act besides Section 21 of the NDPS Act. Even if offence under NDPS Act is not taken into consideration, the other charges will stand which are very serious in nature.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. The petitioners' counsel's argument is well-founded, in accordance with the precedent established by a Division Bench of the Court in the case of Ajit Singh *supra*. In Ajit Singh case, it was ruled that a police report filed without the Chemical Examiner Report is deemed an incomplete challan. Consequently, the petitioners have the right to seek default bail under Section 167 (2) of the Criminal Procedure Code, in conjunction with Section 36A (4) of the NDPS Act.

7. Furthermore, in response to a query from the Court, the learned State counsel, acting on instructions from SI Harinder Singh, informs that the challan was filed on 05.11.2022, signifying the completion of the investigation regarding the petitioners. Custodial interrogation of the petitioners is no longer necessary, and the allegations against them will be subject to trial proceedings. Currently, there are 22 prosecution witnesses, none of whom have been examined so far. Given the slow pace of the trial, it will take a considerable amount of time to commence and conclude the trial. Bail serves to preserve an accused individual's freedom until their guilt or innocence is established. However, the petitioners have already been incarcerated for over a year, having been in custody since 20.09.2022 and 09.09.2022, respectively.

8. The petitioners are presently in preventive custody solely based on an unsupported suspicion that their release could lead to evidence tampering or

witness influence. The documentary evidence as well as FSL report related to the contraband have already been submitted to the trial court, and the accused have no access to these materials. Therefore, the likelihood of evidence tampering is non-existent since the investigating agency has already secured the evidence. Additionally, all the witnesses are official personnel, which makes concerns about potential influence by the prosecution equally baseless.

9. The allegations against the petitioners are a matter for trial. At this stage, there appears to be reasonable grounds to believe that the petitioners may not be guilty of the alleged offense. Moreover, they are unlikely to commit any offense while on bail.

10. Petitioners are stated to be family men with responsibilities, having fixed abode, it is unlikely that they pose any flight risk and/or will flee from trial proceedings.

11. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioners in further preventive custody.

12. Accordingly, instant revision petition is allowed and order dated 27.04.2023 passed by learned Judge, Special Court, SAS Nagar (Mohali) is set aside. Petitioners are ordered to be released on bail, if not required in any other case, on their furnishing bail bonds and surety bonds to the satisfaction of learned trial Court, where their case is being tried and in case he/she is not available, before learned Duty Judge, as the case may be.

13. In case, petitioners are found involved or get involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of their bail in the instant case.

14. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the

limited purpose of hearing the instant revision petition alone and learned trial Court shall proceed without being influenced with this order.

15. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 03, 2023
Ajay

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