

CRM-M-57930-2023 (O & M)
CRM-M-10850-2023 (O & M)
CRM-M-60604-2022 (O & M)

1 *2023:PHHC:158019-DB*

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

260+203

2023:PHHC:158019-DB

CRM-M-57930-2023 (O & M)
CRM-M-10850-2023 (O & M)
CRM-M-60604-2022 (O & M)
Date of Decision: 15.12.2023

Sarabjit Singh

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Ranjan Lakhanpal, Advocate,
for the petitioner (in CRM-M-57930-2023).

Mr. R.S. Rai, Sr. Advocate,
with Mr. Anurag Arora, Advocate,
and Mr. Puneet Bali, Advocate,
for the petitioner (in CRM-M-10850-2023).

Mr. Prince Singh, Advocate,
for Mr. Rajat Narwal, Advocate,
for the petitioner (in CRM-M-60604-2022).

Mr. Arjun Sheoran, DAG, Punjab.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of three petitions filed by the same petitioner wherein relief is claimed for grant of bail either on regular basis or on the ground of violation of statutory provisions of law and lastly on medical grounds.

Pleadings in CRM-M-57930-2023

2. The present petition has been filed for grant of interim bail to the petitioner in case FIR No. 45 dated 03.03.2013 under Sections 21, 61, 85 of

Act'), Sections 420, 467, 468, 471 IPC and under Sections 25, 54 and 59 of the Arms Act, P.S. Fatehgarh Sahib, District Fatehgarh Sahib on the ground that the petitioner can undergo his surgery as soon as possible. He is stated to be suffering from an infection in his rectum area which has led to severe pain while defecating and he being a patient of hyper tension, diabetes and perianal fistula, was also referred to Rajindra Hospital, Patiala. His request for interim bail has been rejected by the Special Judge, CBI, Punjab vide order dated 12.09.2023 (Annexure P-4) while noting the fact that the FIRs in question were of the year 2013 and the petitioner was declared a proclaimed offender on 03.09.2013 and had been absconding since then and could not be arrested till 27.01.2022 and hence there is a possibility of his absconding.

3. It is the case of Mr. Lakhanpal appearing for the petitioner that he has been falsely implicated and was not present at the spot. He has been implicated on the statement of the co-accused who had been apprehended by the police party and from whom the recovery from an Innova car had been effected. It is further his case that the recovery of the drugs and of Qualis car bearing registration No. PB 50K 7070 was done from his house on account of a raid on 26.03.2013 and the petitioner's brother Inderjit Singh had also availed his legal remedy against the said recovery.

4. The State, in its reply and in the custody certificate, has brought to the notice of this Court that 1 year, 10 months and 9 days is the period of custody. In pursuance of the order passed by us on 21.11.2023 that the petitioner be examined by a Board of Doctors of Rajindra Hospital to give their opinion regarding his ailment and the requisite reply has been filed. The factum of his medical ailment and the fact that he needs surgery for fistula

has been confirmed by the Medical Board of the Rajindra Hospital, Patiala. It also goes on to show that he remained admitted in the Rajindra Hospital from 11.08.2023 till 17.08.2023 and was advised for follow up for surgery in the OPD after two weeks. Counsel for the petitioner has submitted that he wishes to get himself treated at PGIMER, Chandigarh and, therefore, he be granted the benefit of bail.

Facts of CRM-M-10850-2023

5. The petitioner seeks regular bail in FIR No. 69 dated 16.04.2013 under Sections 22, 25, 27-A, 29, 61 and 85 of the NDPS Act, P.S. Fatehgarh Sahib, District Fatehgarh Sahib.

6. The benefit of regular bail was denied on 11.10.2022 (Annexure P-5) by the Special Judge, CBI, Punjab on account of the fact that the arrest was after 8 years and the petitioner was an ex-police official. It was also noticed that the vehicle in question PB05 K 7070, which had been apprehended and which was in possession of other accused, was stated to be actually belonging to the petitioner and, therefore, on account of heavy recovery being effected from the vehicle of 8 kgs 500 grams of intoxicant powder and the fact that the vehicle was *benami* in the name of one Tarsem Singh and the petitioner was paying the installments of the vehicle, the benefit of regular bail was denied.

7. Mr. R.S. Rai, Sr. counsel appearing for the petitioner has accordingly submitted that the vehicle in question was in the name of Tarsem Singh and as per the challan presented on 05.06.2022 (Annexure P-4) against the petitioner, the allegations were of conniving with the accused Jagdish Singh @ Bhola in international drug smuggling and had never been

apprehended at the spot. Merely on account of the affidavit given by Tarsem Singh, the deemed ownership of the Qualis vehicle had been put on the petitioner and it would not be sufficient as such to link him with the recovery of the drugs in question.

Facts of CRM-M-60604-2022

8. In the present petition, bail is sought in FIR No.56 dated 15.05.2013 under Sections 379, 411, 468, 471, 473, 120-B IPC, under Sections 21, 22, 25, 25-A, 29 of the NDPS Act and under Sections 25, 54 and 59 of the Arms Act, P.S. Banur, District Patiala on the ground that the challan was not presented and investigation not being completed within 6 months period, an indefeasible right of the petitioner as such arose. It has been further pointed out that the petitioner was not apprehended at the spot in the FIR in question and, therefore, he is liable to be granted the benefit of bail. Resultantly, the orders passed by the Special Judge, CBI, Punjab dated 09.08.2022 and 17.08.2022 (Annexures P-1 and P-3) are challenged. Reliance is also placed upon the defence of the State that the supplementary challan had not been presented within the prescribed period and, therefore, departmental proceedings had been initiated against the concerned officers and the period of 180 days ended on 08.08.2022.

9. Counsel for the State, while rebutting the arguments, has pointed out that the petitioner has himself, in CRM-M-57930-2023, referred to the fact that the Qualis vehicle as such had been recovered from the house of the petitioner and his brother Inderjit Singh had also filed petition under Section 482 Cr.P.C.

10. A perusal of the pleadings of CRM-M-12029-2013 filed by

Inderjit Singh, brother of the petitioner which had been preferred by the same counsel who is arguing today, would go on to show that it was pleaded that the said vehicle bearing No. PB05 K 7070 belongs to Tarlochan Singh but had been confiscated when the police party had raided the house. The prayer had, thus, been made that the vehicle be returned and the incident should be inquired into. The said petition had been disposed of alongwith the bunch of cases on 07.10.2015, ***Jagjit S. Chahal vs. State of Punjab, 2015 (4) RCR (Crl.) 834*** while noticing that a separate petition bearing CRM-M-2915-2014 has also been filed by Sarabjit Singh, who was a dismissed police official and was also seeking quashing of FIR No.69 and an independent probe into FIR No.45. The plea of being involved at the instance of the Education Minister was also noticed and the fact that the vehicle had been taken away. The State had objected to the said objection by pointing out that the petitioner was a dismissed Sub Inspector and involved in four other cases in different areas ranging from Bathinda, Mohali, Ludhiana and Chandigarh. It was also noticed that he had filed CRM-44070-2015, which was withdrawn by him on 16.04.2013 on the undertaking that he would surrender before the trial Court and this Court had given the benefit that the bail application be decided within two days. The relevant pleadings as reproduced in the above said order read thus:-

“52. In this petition u/s 482 CrPC, the petitioner seeks a direction to the State of Punjab and its Police authorities not to harass or obstruct him from harvesting the crops standing on his land in village Mehta, Tehsil Tapa Mandi, District Barnala. He also seeks a direction for the 'return' of his Qualis car bearing PB- 05K-7070 as well as an enquiry by this

Court in the entire incident so that the persons found involved are punished in accordance with law.

(53) The petitioner has alleged that on 06.04.2013 at about 8.30 am, a police force of about 135 police personnel traveling in two buses, two Innova cars and one Gypsy car arrived at his residence and without showing any Search Warrant to the V.VISHAL 2015.10.13 11:18 I attest to the accuracy and authenticity of this document petitioner's mother, ransacked his entire house after breaking doors, windows etc. They untied the domestic cattle and "confiscated Toyota Qualis car PB-05K-7070 which belongs to Mr. Tarlochan Singh who is friend of the petitioner". The car was allegedly borrowed from his friend. The police forced the mother of the petitioner to sign some blank papers. Thereafter, the police personnel left at around 1.30 pm but raided the petitioner's house again on 08.04.2013 and stopped him from harvesting the wheat crop.

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(61) The petitioner has alleged that while he was posted as SHO, Police Station Dialpur, District Bathinda in the year 2006, he had displeased Sh. Sikander Singh Malooka who was then the District Jathedar of Akali Dal (Badal) and was found misusing the red-light atop his vehicle. Sh. Malooka is now Education Minister of Punjab Government and he being 'inimical' started harassing the petitioner. It is alleged that under the influence of Sh. Malooka, the petitioner and his family members have been falsely implicated in FIR No.45 dated 03.03.2013 according to which, a raid was conducted at the petitioner's residence and 2.6 kg opium along with intoxicant powder is claimed to have

been recovered when he had gone along with his family members to watch a movie. The police party also raided the house of petitioner's brother Inderjit Singh on 06.04.2013 and stopped him from harvesting the land measuring 100 acre in village Mehta, District Barnala. His brother's 35 cattle were let off and the Toyota Qualis vehicle No.PB-05K-7070 was also taken away.

(62) The petitioner's brother Inderjit Singh approached this Court (in CRM-M-12029-2013) on 09.04.2013 alleging that his vehicle was illegally taken away by the police and this Court issued notice on 11.04.2013.”

11. Apparently, he never surrendered and it is only on 27.01.2022 he was arrested in another case. Eventually, the petitions filed were dismissed by the co-ordinate Bench and supervisory team of three IPS Officers as such was constituted to examine the charge sheets filed in the subject FIRs.

12. Keeping in view the above background, the gamut of argument raised by Mr. R.S. Rai, Sr. Advocate that he had no connection with the vehicle in question which was apprehended while carrying drugs fizzles out since it is the pleaded case of the petitioner alongwith co-accused on earlier occasions that the vehicle was under their control. It has, thus, to be gone into as to whether there was conscious possession which was attributable to the petitioner as such of the drugs which were recovered from the said vehicle under the control of the petitioner but being driven by the co-accused- Davinder Singh.

13. Therefore, ***there is no merit*** in the argument raised for bail in FIR No. 69 dated 16.04.2023 under Sections 22, 25, 27-A, 29, 61 and 85 of

10850-2023 on this ground and the petition accordingly stands dismissed.

14. Regarding benefit of default bail claimed in FIR No.56 dated 15.05.2013 under Sections 379, 411, 468, 471, 473, 120-B IPC, under Sections 21, 22, 25, 25-A, 29 of the NDPS Act and under Sections 25, 54 and 59 of the Arms Act, P.S. Banur, District Patiala in CRM-M-60604-2022, we are of the considered opinion that it has already been noticed by the trial Court that in the orders which have been impugned that conviction had already been recorded of the other co-accused on 13.02.2019 and the challan already stood presented on 29.01.2016 (Annexure P-5). Since they had been declared proclaimed offenders and proceedings had to be completed against them under Section 82, the needful had been done by presenting the proceedings under Section 299 Cr.P.C. and the supplementary challan was to be presented as and when they were to be arrested. The factum of the challan having been presented in Court on an earlier occasion in the judgment of conviction which has been recorded against the co-accused dated 13.02.2019, reads thus:-

“During the investigation accused Amarjit Singh Koonar, Lebar Singh Daleh, Pardeep Singh Daliwal, Rajwinder Singh @ Raja, Amrinder Singh, Sarabjit Singh, who were declared proclaimed offenders in this case and challan against them was also presented in the court.”

15. Thus, the argument which has been raised that there was a violation under Section 167(2) and the petitioner was entitled for the regular bail has been rightly rejected. A perusal would also go on to show that the petitioner is seeking to take the benefit on account of the fact that voluminous

preferring CRA-S-755-2019, Jagdish Singh @ Bhola vs. State of Punjab, the State was constrained to file applications in the said appeal bearing CRM Nos. 36733 and 36853 of 2022 praying that the record be sent back since one accused Sarabjit Singh had been arrested and who had earlier been declared a proclaimed offender. This Court on 27.09.2022, passed the following order in the said applications:-

“Application No. CRM-36733-2022 has been filed by the learned State counsel, which is supported by an affidavit of Yadwinder Singh Sandhu, PPS, Assistant Inspector General of Police, Administration, Bureau of Investigation, Punjab, for issuance of directions to return the original police file of the case FIR No.56 dated 15.05.2013. The same was deposited in compliance of the letter dated 03.07.2019 received in the Office of SSP, Patiala from the Registrar General of this Court, wherein the typed translated paper books, the commitment file, police file and weapon of offence, if any, were to be supplied on account of the pendency of the appeal. It is submitted that the said police file is required to be produced in another litigation where extradition proceedings has been initiated for extradition of some persons who are in abroad.

Similarly, a request has also been received from Special Judge, CBI, SAS Nagar, which is numbered by the office as CRM36853-2022, wherein it has been prayed to return original record of CRA-S-755-2019 as one accused, namely, Sarabjit Singh, who was declared as proclaimed offender has now been arrested and remand papers are pending in the Court and trial is yet to commence against him, as the original

record of the investigation would be required.

Accordingly, the present applications are allowed and the original police file in the above FIR be returned to the concerned official after retaining a photocopy of the same in the High Court record under proper receipt.

16. A perusal of the said order would go on to show that it was also on the request of the Special Judge that the said order had been passed in CRM-36853-2022. Thereafter on 12.10.2022, since there was no specific mention regarding the return of the original Lower Court record in relation to the police file, the clarificatory order was passed on the said date, which reads as under:-

“Office has put up the case on the ground that directions had not been issued regarding the return of the original Lower Court record as per the order dated 27.09.2022 though the same were passed regarding the return of police file.

A perusal of the record would go on to show that the request was received from the Court of Special Judge. Accordingly, let the original Lower Court record also be returned to the said Court, in view of the request received.

It has also been brought to our notice that the record is voluminous in nature and running to approximately 40000 pages. Therefore, in case if need arises, further directions will be issued to the Trial Court to send photocopy of the record.

IOIN stands disposed of.”

17. Apparently, the police was thus handicapped as such to complete the proceedings on account of the fact that the original record was lying with this Court and the supplementary challan could not be filed. We are of the

considered opinion that in such circumstances merely because there is default in filing the supplementary challan, it would not entitle the petitioner to avail the benefit of bail in the facts and circumstances. Reliance can be placed upon the judgments of the Apex Court in ***Narendra Kumar Amin vs. CBI and others, (2015) 3 SCC 417*** wherein, it was held that the benefit of default bail was not liable to be granted merely on account of the fact that the police report filed under Section 173(2) Cr.P.C. was not complete. Resultantly, the order of the High Court refusing to grant default bail was upheld wherein it had been recorded that the charge sheet had disclosed the contents which were necessary in law to be mentioned.

18. In similar circumstances, as noticed above, only the supplementary challan had to be filed and there was a delay apparently on account of the fact that the original record was before this Court pertaining to the police file.

19. Similarly, in ***State of Maharashtra vs. Surendra Pundlik Gadling and others, (2019) 5 SCC 178***, a three-Judge Bench while examining the provisions of the Unlawful Activities (Prevention) Act, 1967 wherein Section 43D provided that for purposes of completing the period of investigation, satisfaction had to be recorded in the report of the public prosecutor indicating the progress of investigation and the reasons for detention beyond the prescribed period. Accordingly, it was noticed that once the investigation is at a crucial stage and if there was an application of mind, the order granting extension to complete the investigation within the additional period given is not liable to be interfered with.

20. The factual aspect has already been examined above as to why

the prosecution was not able to file the supplementary challan and, therefore, there are justifiable grounds as such that the benefit of default bail is not liable to be granted, as claimed.

21. ***Accordingly, CRM-M-60604-2022 also stands dismissed.***

22. In CRM-M-57930-2023, it has also been brought to our notice that a heavy recovery as such was effected when the police raised the house of the petitioner which is in the form of 2 kgs 600 grams of opium, 1 kg of white power which later on, on chemical analysis, came out to containing diphenoxylate apart from one gun 12 bore, 3 cartridges 12 bore, one revolver single action army, 6 cartridges, 11 empties of AK-47 rifle, two laptops and 10 mobile phones of different makes were also recovered. On that account also keeping in view the bar under Section 37 of the NDPS Act, ***we are not inclined to grant the benefit of regular bail in all the three cases.*** The petitioner apparently, despite being a police official, has continued to evade the hands of law since the year 2013 and could only be apprehended on 27.01.2022 in a separate case and was produced on production of warrants.

23. In such circumstances, the order of the Courts below denying him the benefit of regular bail cannot be said to be without any justification. ***Accordingly, CRM-M-57930-2023 also stands dismissed.***

24. However, on humanitarian grounds, we consider the request for grant of medical treatment to be a possible solution to ensure that he gets a proper treatment. Since it is pointed out that he wishes to get himself treated at PGIMER, Chandigarh, we direct the Superintendent of Central Jail, Patiala to ensure that he is allowed to get himself examined at PGIMER, Chandigarh for the purposes of treatment and the surgery in question. In case he is to be

operated upon thereafter, the authorities concerned will ensure that an adequate police guard is deputed alongwith him during his time of admission and recovery at PGIMER, Chandigarh.

25. Accordingly, *we dismiss all the three petitions* for the reasons given above.

(G.S. SANDHAWALIA)
JUDGE

15.12.2023
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(LAPITA BANERJI)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes