

201 CRM-5937-2019 in CRA-D-165-2019

**ARWINDER SINGH @ GHOGA AND ORS.**  
**VS.**  
**STATE OF PUNJAB**

Present:-Mr. Rajvinder Bains, Advocate for applicants-appellants.

Mr. IPS Doabia, Additional Advocate General, Punjab.

\*\*\*\*\*

*(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court)*

Prayer in this application under Section 389 Cr.P.C. on behalf of applicants-appellants is for grant of suspension of sentence in case FIR No.82 dated 24.05.2016, under Sections 121 and 121-A IPC and Sections 10 and 13 of the Unlawful Activities (Prevention) Act, 1967, Police Station, Rahon.

Allegations against the applicants-appellants are that have been inciting people to resort to violence with the objective of waging war against India, with a view to establish an independent State/Nation by the name "Khalistan" by way of liberating the sikhs from India or Indian Rule.

Learned counsel for the applicants-appellants submits that the applicants-appellants have been falsely implicated in the instant case only on the basis of literature, books and pamphlets recovered and material shared on the facebook by one of the applicants-appellants, namely, Arwinder Singh. He further submits that the entire case of the prosecution revolves around the disclosure statements of the applicants-appellants, which are inadmissible in evidence, as those were recorded in the police custody. The passports so recovered from the applicants-appellants were genuine and the possession of posters/flexes and other material allegedly recovered from the applicants-appellants does not attract the provision of any of the offence. The so called independent witness PW-9 turned hostile.

Further elaborating his arguments, he has submitted that neither any weapon of any kind nor any explosive substance was found in possession of any of the applicants-appellants and, therefore, it will be a farfetched argument that the applicants-appellants intended to wage war or even attempted to wage war against the Government of India or even conspired to commit such offence. Nothing tangible has been brought on the record that the applicants-appellants were members of the banned unlawful assembly "Babbar Khalsa International" or they have ever committed, abetted, advocated, advised or incited the commission of any unlawful activity. None of the material recovered from the possession of the applicants-appellants was banned. With these submissions, it has been prayed that the applicants-appellants, who have already undergone actual sentence of approximately 4 years and 08 months out of total sentence awarded to them i.e. rigorous imprisonment for life, the concession of suspension of sentence may kindly be extended.

Without disputing the custody period, learned State counsel has argued that it is proved on record that applicant No.1-Arwinder Singh, being active member of banned terrorists group "Babbar Khalsa International" was inciting the young Sikhs followers to join the said organization. All the applicants-appellants waged war against India and indulged in anti-national activities. Applicant No.1-Arwinder Singh instigated and inspired applicant No.2-Surjit Singh @ Lucky personally on facebook for encouraging armed struggle. The recovery of the printed material from the possession of the applicants-appellants was sufficient to incite and encourage the young generation to involve themselves in the anti-national activities. They were propagating the cause of Khalistan and in the given circumstances, no concession of suspension of sentence should be extended to them.

After hearing learned counsel for the parties and perusing the record on the file, we are of the considered opinion that it is not a fit case where the concession of suspension of the remaining sentence of the applicants-appellants can be extended. It has been established on record that incriminating material, propagating the cause of Khalistan was recovered from the possession of the applicants-appellants. A reasonable inference can be drawn that the primary object of keeping and distributing such material was the establishment of Khalistan on Baisakhi. The applicants-appellants kept the aforesaid material with them with the intention of using the same for propaganda and inciting the people to resort to violence with a view to wage war against the Government of India, so that an independent State/Nation in the name of Khalistan be formed. The offence, alleged to have been committed are very serious in nature and in the given circumstances, we do not find any merit in the instant application and the same is dismissed.

(JASWANT SINGH)  
JUDGE

(SANT PARKASH)  
JUDGE

18.02.2021  
sonika