

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM-M-10674-2015 (O&M)

Date of Decision: 14.10.2015

Satinder Dhama @ Satender Dhama ... Petitioner

vs.

State of Punjab ... Respondent

(2) CRM-M-17138-2015 (O&M)

Satinder Dhama ... Petitioner

vs.

State of Punjab ... Respondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Ms. Tanu Bedi, Advocate and
Mr. DS Pheruman, Advocate for the petitioner

Ms. Reeta Kohli, Addl. AG Punjab with
Mr. Vaibhav Sharma, DAG Punjab

Surya Kant, J.

(1) This order shall dispose of CRM-M Nos.10674 & 17138 of 2015 as some of legal issues and the facts of both the cases are inter-linked. For clarity, the facts are noticed separately.

CRM-M-10674-2015

(2) In this petition under Section 482 CrPC, the petitioner seeks quashing of criminal proceedings initiated against him pursuant to FIR No.45 dated 03.03.2013, U/S 18/21/22/25-A/27-

A/29 of NDPS Act and 25/54/59 of Arms Act, 420/465/468/471/120-B IPC, registered at Police Station Fatehgarh Sahib, District Fatehgarh Sahib including the orders dated 16.08.2013 (P2 & P3) whereby the Special Court declined the petitioner's application for his discharge and has framed charges against him.

(3) As per the allegations contained in the FIR, the police party was patrolling near T-point in the area of village Mandofal. At about 1.40 pm one Innova car bearing regd. No.PB-08-BM-1626 colour metallic came from Mandofal side and on suspicion, search was conducted in the presence of Gazetted Officer, namely, Arshdeep Singh Gill, DSP(D) who was called at the spot and a large quantity of illicit drugs including heroin was recovered from the possession of Kulwinder Singh @ Rocky s/o Kuldeep Singh, who was driving the car and another occupant Anoop Singh Kahlon – a NRI. A brief-case lying in the car was also opened and a sum of ₹8,94,800/- Indian currency, 77 Canadian dollars of denomination of 100, 20 Canadian dollars of denomination of 50 and some US Dollars, 5 English Pound, .32 bore revolver with 4 live cartridges, were recovered. The Canadian Passport of Anoop Singh Kahlon, ATM cards of different Banks, SIM cards etc. were also recovered.

(4) Anoop Singh Kahlon is said to have got recovered 16kg heroin along with drugs packing material from his house on 07.03.2013. Kulwinder Singh @ Rocky also got recovered 10kg heroin from the trunk of his car. His father (Kuldeep Singh) and

brother-in-law (Sandeep Singh Thakur) too were nabbed while they were trying to flush the heroin and burning the polythene envelopes. At this stage, the name of alleged kingpin of drug mafia Jagdish Singh @ Bhola surfaced and pursuant to a raid conducted at his house, 10kg intoxicant powder with 8.70 lacs Indian currency and drug packing material was recovered.

(5) The police version is that during interrogation one or the other accused started spilling the beans and disclosed names of their associates and petitioner's name also came into limelight on 31st March, 2013. As per the report under Section 173 CrPC, 75kg pseudoephedrine and 3kg fragmented Methamphetamine intoxicant powder was recovered from the boot space of car No.PB-11-AY-7743 parked in petitioner's house No.1669, Sector 15, Panchkula though he escaped and successfully evaded his arrest. As per the Chemical Examiner's report dated 06.05.2013, in the sample taken out of 75kg intoxicant powder, methamphetamine to the extent of 05.97% has been found.

(6) As regard to the second sample taken from fragmented methamphetamine (ICE) weighing 3kg, the chemical examiner has given report dated 13.11.2014 according to which, the sample contained methamphetamine to the extent of 84.29%.

(7) The petitioner and some of his co-accused moved applications seeking their discharge in the case. Those applications were turned down by the Special Judge vide order

dated 16.08.2013 after making a brief reference to the specific accusations made against each accused including the petitioner.

(8) Simultaneously, learned Special Judge passed another order on 16.08.2014 framing charges against the petitioner and his co-accused. Following charges have been framed against the petitioner:-

“That you Satinder Dhama on 31.3.2013 in the area of Panchkula, retained 75kgs intoxicant powder (Pseudoephedrine), and 3kgs of ICE, in Innova No.PB-11-AY-7743, in contravention of the provisions of Narcotic Drugs & Psychotropic Substances Act and thereby you committed an offence punishable under Section 25-A and 22 of the Narcotic Drugs & Psychotropic Substances Act and within the cognizance of this Court.

That you Satinder Dhama, on the same date time and place, forged Icard allegedly issued by Govt.Se.Sec.School Sec-15 Panchkula, with intention to commit fraud and thereby committed an offence punishable under Section 465 of IPC and within the cognizance of this Court.

That you Satinder Dhamma on the same date time and place, forged Icard allegedly issued by the aforementioned school, intending that the same should be used for the purpose of cheating and thereby you also committed an offence punishable under Section 468 of IPC and within the cognizance of this Court at Fatehgarh Sahib.

That you Satinder Dhamma on the same date time and place, also fraudulently and dishonestly used the Icard, allegedly issued by

said school, as genuine, and you knew and had reason to believe at the time when used it to be a forged document and thereby you committed an offence punishable under Section 471 of IPC and within the cognizance of this Court.”

(9) The petitioner has laid challenge to both the above-mentioned orders, namely, the one rejecting his application for discharge and the other framing charges against him.

CRM-M-17138-2015

(10) The petitioner seeks quashing of FIR No.50 dated 03.04.2013 u/s 22/29/61/85 of NDPS Act, 25/54/59 of Arms Act, registered at Police Station, Urban Estate, Patiala, as also the subsequent proceedings arising therefrom.

(11) Firstly, a brief reference to the allegations contained in the FIR may be made. The police party while on patrol duty, is said to have received a secret information that Palvinder Singh @ Pinda, Talwinder Singh @ Tony, Rajender Singh @ Mintu, Ravi Deol, Jagdish Singh @ Bhola, Satinder Singh @ Dhama and their several accomplices have formed gang in connivance with each other for the supply of heroin, smack, opium and other kinds of intoxicant substances to the students studying in the Universities at Patiala, Chandigarh and other places. They also supply illegal arms. Some of them are proclaimed offenders and with a view to evade arrest, they stay in expensive hotels. The information was treated reliable and FIR was registered.

(12) Palwinder Singh @ Pinda, who had already been arrested in FIR No.202 dated 26.10.2013 U/S 307/34 IPC read with Arms Act and Sections 21/22/61/85 of NDPS Act registered at PS Civil Lines Patiala, was brought on production warrant and arrested in this case. It is alleged that finally 7200 intoxicant capsules were got recovered from the petitioner's co-accused.

(13) The petitioner was arrested on 15.05.2013 in another case FIR No.56 dated 15.05.2013 registered under the NDPS Act, IPC and Arms Act at PS Banur, District Patiala. His production warrants were taken and he was interrogated in this case on 23.11.2013. No additional recovery was effected at his instance. The challan has been presented in this case as well.

CONTENTIONS OF THE PETITIONER

(14) Learned counsel for the petitioner alleged his false implication in a chain of cases for extraneous considerations as there is not even iota of evidence to connect him with the offence(s). He urged that since the trial will be a severe blow to the petitioner's liberty, such proceedings are liable to be struck down at the threshold. Questioning the rejection of petitioner's application for discharge or framing of charges against him in FIR No.45 dated 03.03.2013, his learned counsel contended that :-

- (i) There is no evidence or even suggestion that the petitioner was found in the conscious possession of any contraband;

- (ii) The petitioner was not found present physically, hence the so-called recovery from the car is not his “conscious possession”;
- (iii) The police version is totally absurd and illogical and cannot be relied upon;
- (iv) The Special Court ought to have applied its mind instead of being a mute spectator to the police version;
- (v) The petitioner has placed on record the information taken by his father and brother under RTI (P4 colly) which completely falsify the police case;
- (vi) The so-called recovery has been shown from the car “parked inside” the petitioner’s house whereas there is no space in their house to park such luxury car;
- (vii) No search warrants for the house were obtained.

(15) Ms. Tanu Bedi learned counsel for the petitioner in the first case relied upon **Century Spinning and Manufacturing Co.Ltd. vs. State of Maharashtra (1972) 3 SCC 282**, to contend that the Court is not expected to frame charges automatically only because the prosecution has filed its report under Section 173 CrPC. The Court has to judicially consider the material before framing charges. She cited **Union of India vs. Prafulla Kumar Samal, AIR 1979 SC 366** to emphasise the powers possessed by the Court while considering the question of framing charges as it can undoubtedly sift and weigh the evidence for the limited purpose as to whether or not a *prima facie* case is made out and

that the Judge while exercising jurisdiction under Section 227 CrPC does not act merely as a post-office or a mouthpiece of the prosecution. She also relied upon (i) **Niranjan Singh Karam Singh Punjabi & Ors. vs. Jitendra Bhimraj Bijja & Ors., AIR 1990 SC 1962**; (ii) **Suresh Budharmal Kalani @ Pappu Kalani vs. State of Maharashtra, AIR 1998 SC 3258**; and (iii) **Dilawar Balu Kurane vs. State of Maharashtra, AIR 2002 SC 564** laying down the guidelines to be followed while considering the question of framing charges. A pointed reference was made to the judgement of Hon'ble Delhi High Court in **Dilbagh Singh vs. DRI, Crl. Rev. P.517/2008** decided on 14.05.2009 which pertains to the framing of charges in a case registered under the NDPS Act.

(16) Learned counsel also pressed into aid (i) **Rajiv Thapar & Ors. vs. Madan Lal Kapoor, (2013) 3 SCC 330**; (ii) **State of Haryana & Ors. vs. Ch.Bhajan Lal & Ors., (1992) Suppl.(1) SCC 335**; and (iii) **Ravinder Singh vs. Sukhbir Singh & Ors., (2013) 9 SCC 245** with reference to the powers of the High Court under Section 482 CrPC and the scope of interference in such like matter especially to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process.

(17) Similarly, petitioner's learned counsel in the second case vehemently urged that there is not even a whisper of recovery or any incriminating role played by the petitioner in the

commission of so-called offence. Production warrants were obtained and the petitioner was interrogated but the report under Section 173 CrPC is conspicuously silent in respect of any recovery at the instance of petitioner. It is thus a case of no evidence.

(18) Learned State counsel opposed the petitioner's prayer with equal force and argued that it's a case of recovery of 75kg intoxicant powder and huge quantity of ICE from the petitioner's car which was kept "ready to move for supply". She maintained that the petitioner is an active member of the drug mafia and is a close associate of its kingpin Jagdish Singh @ Bhola. The huge quantity of contraband worth lacs of rupees could not have been arranged by the police only to falsely implicate nor it could be lawfully purchased from any pharmaceutical company. The car found parked in the petitioner's house is owned by Jagdish Singh @ Bhola – the alleged kingpin, with whom the petitioner has not denied his relationship. She further explained that admittedly the petitioner's house was under renovation and his family was not residing therefore, no search warrant were obtained as only the workers/labourers engaged for renovation were present.

(19) As regard to the second case, she pointed out that the first report under Section 173 CrPC has been filed keeping option to submit a supplementary report under Section 173(8) CrPC.

(20) Having heard learned counsel for the parties at some considerable length, we do not find any merit in both the petitions.

We say for the reasons that during the course of hearing of the

bunch of cases of drug trafficking in Punjab State, name of the petitioner frequently surfaced as an associate of a named drug lord. The issue whether or not contraband of 'commercial quantity' was recovered from the car allegedly parked inside or outside the petitioner's house is a pure question of fact which will be answered by the Special Court on consideration of the evidence. Similarly, whether or not the contraband kept inside a vehicle which was physically in petitioner's possession, is liable to be treated in his 'conscious possession' is also a mixed question to be answered by the Special Court at an appropriate stage. No definite opinion can be formed by this Court in this regard in exercise of its inherent powers under Section 482 CrPC.

(21) The learned Special Judge while passing self-speaking orders has considered the material brought on record along with report filed under Section 173 CrPC. It is difficult to hold that there is no judicious application of mind or that charges have been framed mechanically. The case-law cited above is inapplicable to the fact-situation of the instant case. The judgement quashing charges framed under the NDPS Act against a cab-driver who had no knowledge of the contraband possessed by a foreigner who had hired his cab, is surely distinguishable.

(22) As regard to the second case, the instant petition is premature for two reasons. Firstly, the petitioner can seek his discharge before the Special Court who is obligated to decide such application in accordance with law. Secondly, the prosecution is

keen to submit a supplementary report under Section 173(8) CrPC and the petitioner's fate to seek outright discharge would rest upon the material, if any, to be brought on record. Such an exercise will have to be undertaken by the State police in all these drug trafficking cases in view of the directions issued by this Court vide order dated 07.10.2015 passed in a bunch of petition i.e. **CWP No.88 of 2015 (Jagjit Singh Chahal vs. State of Punjab & Ors.)**.

(23) For the reasons afore-stated we do not find any merit in these petitions which are accordingly dismissed. However, the observations made hereinabove shall have no bearing on the merits of the case.

(Surya Kant)
Judge

14.10.2015
vishal shonkar

(P.B. Bajanthri)
Judge

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