

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-4615 of 2016

Date of Decision: 28.04.2016

Narayan Sai alias Narayan Asharamji Harplani

...Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Ms. Tanu Bedi, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl.A.G., Haryana and
Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

Instant petition has been filed by the petitioner Narayan Sai @ Narayan Asharamji Harplani son of Asha Ram, resident of Sant Shri Asha Ram Ashra, Motera, Ahmedabad, District Ahmedabad, Gujarat under Section 482 CrPC for setting aside the order dated 15.1.2016 passed by learned Judicial Magistrate Ist Class, Panipat, whereby his production warrant was issued for 10.2.2016. Petitioner has further prayed that the police be directed to investigate the FIR by questioning him at Surat.

The Magistrate be further directed to use electronic video link for further requirement of production of accused before the Court at Panipat, if need so arises.

The impugned order reveals that before the passing of the order dated 15.1.2016, the prosecution had moved an application for production warrants against the petitioner-accused, whereupon it was ordered that in case the accused Narain Sai is not produced, the Superintendent, District Jail, Surat shall appear in person and explain reasons for non-compliance of the order. However, neither the accused was produced nor the concerned Superintendent, District Jail was present to give his explanation and it is in these circumstances,ailable warrants were issued to Superintendent, District Jail Surat in the sum of Rs.5,000/- with one surety in the like amount.

Briefly stated, FIR No.243 dated 13.5.2015 under Sections 307/452/120-B/34 IPC and Section 25 of the Arms Act was registered at Police Station, Panipat, on the basis of statement of complainant-Devender Chawla son of Kishori Lal Chawla, resident of Sanoli Khurd, District Panipat. As per FIR, on 13.5.2015 at about 9-00 a.m. when the complainant was at home, he received an information that his brother Mahender Chawla, who is a witness in a case against Babu Asha Ram and Narayan Sai, has been shot at by two young boys. Complainant along with his mother and Neeraj etc. of the village lifted his brother, who had received injury on his shoulder and blood was profusely

coming out, to Prem Hospital, Panipat, where injured Mahender Chawla was operated upon. It was alleged that the brother of the complainant was shot at by aforesaid two youths, who were riding on a Pulsor motorcycle, with an intention to kill him. The accused had shot at his brother in a well planned manner, obviously at the instance of the petitioner, as he is a witness against Asharam Babu and petitioner Narayan Sai.

Learned Magistrate vide his order dated 15.1.2016 has issued production warrants against the petitioner before the Panipat Court and the accused has been directed to be produced from the jail at Surat, where he is presently confined in FIR No.31 dated 6.10.2013 under Sections 376(2)(K)(F), 377, 354, 357, 342, 346, 143, 147, 148, 149, 506(2), 120-B IPC registered at Police Station Jahangirpura, District Surat and is in custody since October, 2013. Besides this, the petitioner is also facing trial in a criminal case bearing FIR No.37 dated 13.12.2013 under Sections 120-B/119/213/214/217 IPC and Sections 7, 8, 9, 12, 13(1), 13(2) of the Prevention of Corruption Act, 1988 registered at Police Station Surat.

Reply on behalf of the respondent-State through Desh Raj HPS, D.S.P. Law and Order, Panipat has already been filed. In the preliminary objection, the respondent has pleaded that the petitioner has already been produced before the Judicial Magistrate Ist Class, Panipat by the Gujarat police on 9.2.2016 in compliance of order dated 15.1.2016, therefore, the present

petition has been rendered infructuous. The prayer of the petitioner to interrogate him through video-link is misconceived and illegal. There is no provision under the Code of Criminal Procedure warranting interrogation of an accused by the investigating agency without securing his physical presence more specifically for the offence like present one. It has been further pleaded that during the process of interrogation, the investigating agency may come across certain facts and recoveries which are germane and crucial for concluding the effective investigation. The instant petition filed by the petitioner is nothing but a unique device to evade investigation, so that truth may not surface. Therefore, the petitioner cannot be allowed to interfere in the process of fair investigation as the same cannot be completed without his custodial interrogation. It has been further pleaded that the petitioner has been named in the FIR as an accused and the allegations leveled against him are quite serious in nature, for which, custodial interrogation of the petitioner is required. The injured Mahender Chawla has sustained serious bullet injury on the back of his body and the photographs attached along with the reply are sufficient to establish a *prima facie* case against the petitioner. The bullet injuries have put their impression not only on the body of the injured rather on the walls at the place of occurrence. The injured namely Mahender has got recorded his statement on 15.5.2015 before the Investigating Officer under Section 161 Cr.P.C., wherein he has categorically

stated that he is a witness against Asha Ram, Narayan Sai etc. in cases registered against them in District Surat (Gujarat). Therefore, two unknown persons had fired at him. This firing has been done at the instance of Asha Ram and Narayan Sai, Nishant Raj etc. Similar statements have been made by Sanjay, Sarpanch of Village Sanoli Khurd and Smt. Gopali Devi mother of Mahender, during investigation. Whereas Nishant Raj son of Jagdeep Ghanghas, resident of H.No.1006, Sector 12, Panipat, who is also an accused in the present FIR, was arrested on 26.6.2015.

In view of order dated 8.2.2016 passed by this Court, State has filed reply. As per reply, the petitioner-accused has been sent in judicial custody and therefore, the application of the SHO, P.S. Sadar Panipat seeking his custodial interrogation, has also been kept in abeyance till 16.2.2016. However, on 16.2.2016, this Court while observing that keeping in view the fact that the petitioner has now been produced before the Court of Magistrate at Panipat on 09.2.2016, the order dated 8.2.2016 passed by this Court, whereby the order dated 15.1.2016 passed by the Judicial Magistrate 1st Class, Panipat, was kept in abeyance, was vacated. The learned Magistrate was given liberty to proceed with the matter in accordance with law, without there being any impediment for the learned Magistrate to proceed with the case and thereby leaving the scope of investigation open with the investigating agency.

After passing the order dated 8.2.2016, learned counsel for the petitioner has filed CRM-5322-2016 for bringing on record the facts and developments which have taken place after passing of order dated 8.2.2016 (and the said application has been dealt with separately vide order dated 16.2.2016).

Learned counsel for the petitioner while relying upon Section 167(2)(b) CrPC has submitted that the interrogation of the petitioner, if any, should be made through video conferencing, as it is humanly not possible for him to come Panipat to join investigation all the way from the State of Gujarat, where also the petitioner is being tried in other criminal cases. She further submitted that the video conference would not only be economically viable, but there will be no issue with regard to security of the petitioner. Moreover, the police at Panipat can visit the petitioner in Gujarat to investigate the matter at any time. She has placed reliance upon judgments of Hon'ble the Apex Court in the cases of **State of Maharashtra v. Praful B. Desai (Dr.)** (2003) 4 SCC 601 and **Kalyan Chandra Sarkar v. Rajesh Ranjan** (2005) 3 SCC 284 and contended that recording of evidence by way of video conferencing can be done. She also referred to the judgment in **Abdul Karim Telgi v. State, (Madras), 2008 CriLJ 532**, **Haseen Siddiqui @ Jahangir v. State of UP & ors. 2014(2) RCR (Criminal) 226 All HC**, **Sakshi v. Union of India 2004(5) SCC 518** and **Budhadev Karmaskar v. State of West Bengal (2011) 10 SCC 283** to contend that in the

facts and circumstances of the case and having recourse to Section 167(2)(b) CrPC, the investigation should be conducted by using electronic video link without insisting for the production of the accused.

On the other hand, learned State counsel vehemently argued that there is no such provision under the Code of Criminal Procedure to conduct investigation by way of video-conferencing. He submitted that the allegations against the petitioner are very serious in nature. Therefore, his custodial interrogation is required for speedy and effective investigation. Apart from this, pendency of other criminal cases against the petitioner shows that the petitioner is involved in other criminal cases. He possesses criminal record and thus, he does not deserve any leniency. Therefore, his custodial interrogation is necessary in the case. Furthermore, in compliance of order dated 15.1.2016 passed by learned Judicial Magistrate Ist Class, Karnal, the petitioner has already been produced on 9.2.2016 and therefore, even otherwise, the present petition has been rendered infructuous. There is no such provision in the Code of Criminal Procedure warranting the interrogation of an accused by the investigating agency without securing his physical presence. During the process of interrogation, the investigating agency may have come across certain relevant facts and recoveries which are germane and crucial for concluding the investigation. The present petition is nothing but a clever device

to evade and delay the investigation, so that truth may not be unearthed. The allegation against the petitioner is that the brother of the complainant namely Mahender Chawla has been shot at by two youths at the instance of the petitioner along with his father Asha Ram and Nishant Raj etc. and therefore, the petitioner is required to be dealt with severely.

I have heard learned counsel for the parties.

Section 167(2)(b) CrPC reads as under:-

“167. Procedure when investigation cannot be completed in twenty-four hours.

1. xx xx xx xx xx
2. xx xx xx xx xx
- (a) xx xx xx xx xx
- (b) no Magistrate shall authorize detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;”

A bare perusal of Section 167(2)(b) shows that this section nowhere suggests that the said provision can be invoked during the investigation. Moreover, the judgments relied upon on behalf of the petitioner do not apply to the facts and circumstances of the present, as the judgments in State of

Maharashtra v. Praful B. Desai (Dr.) (*supra*) and **Kalyan Chandra Sarkar v. Rajesh Ranjan** (*supra*) refer to use of video-conferencing during trial, whereas the judgments in the case of **Abdul Karim Telgi v. State** (*supra*), **Haseen Siddiqui @ Jahangir v. State of UP & ors.** (*supra*), **Sakshi v. Union of India** (*supra*) and **Budhadev Karmaskar v. State of West Bengal** (*supra*) are also distinguishable on facts.

Apart from this, the allegations against the petitioner are very serious in nature and therefore, this Court has no hesitation to conclude that the plea of the petitioner that he be interrogated through video-conferencing cannot be accepted. Chapter XII CrPC deals with information to police and their powers to investigate. Therefore, the police is required to adhere to the very provisions of law as enshrined under Chapter XII CrPC. Even otherwise, the powers of a Magistrate under the provisions of Section 167 (2)(b) CrPC are discretionary and that too during trial and one cannot claim as a matter of right that his evidence be recorded through video-conferencing, especially when serious allegations have been levelled against the accused. In case the prayer of the petitioner for investigation through video link is accepted, the very purpose of police investigation would be defeated. Therefore, this Court has no hesitation to conclude that filing the present petition is nothing but a clear abuse of the process of law. The petitioner is not entitled for relief, as prayed for. He has been named as an accused in the FIR and therefore,

he is bound to cooperate in the investigation. In case an accused is allowed to be interrogated through the video conference in the offences, like the present one, the very purpose of police investigation would be frustrated

Accordingly, the present petition is dismissed.

However, it is made clear that the observations made hereinabove shall not be taken as an expression on the merits of the case.

April 28, 2016
AK

(HARI PAL VERMA)
JUDGE