

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

- [1] Criminal Misc.M- No.32967 of 2017
Date of Decision: September 12, 2017
Anoop Singh KahlonPetitioner
versus
State of Punjab and othersRespondents
- [2] Criminal Misc.M- No.32981 of 2017
Kulwant SinghPetitioner
versus
State of Punjab and othersRespondents
- [3] Criminal Misc.M- No.33138 of 2017
Manpreet Singh @ Mani GillPetitioner
versus
State of Punjab and othersRespondents
- [4] Criminal Misc.M- No.33141 of 2017
Avtar Singh @ TariPetitioner
versus
State of Punjab and othersRespondents
- [5] Criminal Misc.M- No.33146 of 2017
Gabbar SinghPetitioner
versus
State of Punjab and othersRespondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.**

Present: Mr.Pradeep Virk, Advocate, for the petitioner(s)

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Surya Kant, J. (Oral)

This order shall dispose of Criminal Misc.M-Nos.32967, 32981, 33138, 33141 & 33146 of 2017, all filed under Section 482 of Cr.P.C., seeking transfer of investigation of (i) FIR No.45 dated 03.03.2013 under Sections 18, 21, 22, 25-A, 27, 27-A, 29, 61, 85 of the NDPS Act; 25/54/59-A of the Arms Act and 420, 465, 467, 468, 471, 201, 120-B of IPC, registered at Police Station Fatehgarh Sahib; (ii) FIR No.42 dated 22.03.2013 registered under Sections 22, 25 of the NDPS Act at Police

Station Sirhind, District Fatehgarh Sahib, and (iii) FIR No.69 dated 08.03.2013, registered under Sections 21/22/61/85 of NDPS Act and Section 13 of F.E.M.A. Act at P.S. Mandi Gobindgarh, District Fatehgarh Sahib, to the Central Bureau of Investigation as, according to the petitioners, the further investigation carried out by the Special Investigation Team (SIT) of Punjab Police, which was constituted by this Court vide order dated 07.10.2015 was not in consonance with the directions contained in the said order.

[2] Though the allegations and facts which led to the registration of above-mentioned FIRs are altogether different, nevertheless there is a commonality to the extent that all the three FIRs pertain to the infamous 'drugs scam' which the Punjab Police claims to have unearthed to expose the cross-border illicit drug trade.

[3] One of the petitioner (Manpreet Singh @ Mani Gill) and nine other suspects apprehended by Punjab Police had earlier filed their respective Criminal Misc. Petitions/Writ-Petitions, seeking identical relief of transfer of investigation of the above-mentioned three FIRs alongwith two more FIRs, to the Central Bureau of Investigation as they did not expect any fair investigation by the Punjab Police. This Court in its order dated 07.10.2015 passed in CWP No.88 of 2014 (Jagjit Singh Chahal versus State of Punjab and others) took notice of the allegations against the local police in para No.138 and 139 of the said order in the following words:-

“...(138) Adverting to the allegations leveled by the petitioners against the local police, it may be seen that the senior-most officer accused of falsely implicating one of them (Manpreet Singh @ Mani Gill) is statedly in the rank of 'Senior Superintendent of Police'. He has neither been named nor impleaded as a party respondent. The

other police officers facing accusations are one DSP, three Inspectors and some Sub Inspectors, who are incidentally posted as SHOs of the police stations where subject FIRs have been registered and/or are members of Special Investigating Team. The Police cadre of Punjab State comprises more than 150 IPS Officers out of whom at least 65 Officers are in the ranks of DGP, ADGPs and IGPs etc. It would be too unfair, and unjustified to presume that none of these senior officers is above-board or that each one has succumbed to some hidden pressure which the petitioners have miserably failed to disclose.

(139) Most of the petitioners are resourceful persons. Many of them are affluent entrepreneurs who have flourishing businesses, landed properties and hold different important positions. There is no established or believable history of past animosity between them and the police officials investigating these cases.....”

[4] After considering the rival contentions this Court proceeded to conclude as follows:-

“....(169) In view of the above discussion, it is held that even as a cumulative effect of all the contentions raised on their behalf, the petitioners have failed to make out a case within those exceptional circumstances where this Court either, in exercise of its writ jurisdiction under Article 226 of the Constitution or inherent powers under Section 482 CrPC, can entrust these matters for a fresh or re-investigation to CBI or any other agency. These petitions are resultantly dismissed and the interim orders staying the trial Court proceedings are vacated and the Special Courts are directed to proceed with the cases in accordance with law subject to the effect of directions issued hereinafter.....”

[5] This Court, none-the-less, noticed some deficiencies in the investigation process and summarized them in para No.(171) saying that:-

“.....(171) Having held that, we cannot refrain ourselves from observing that though the petitioners have failed to make out a case for fresh or re-investigation by an independent agency, nonetheless it stands fairly exposed that –

- (i) The investigation carried out by the Punjab Police lacks scientific methodology or modern techniques necessary to nail the professional criminals like drug lords;
- (ii) There has been an apparent lack of commitment, deliberate or otherwise, in securing impeachable or impeccable evidence of independent nature;
- (iii) There are some loopholes and gaps, whether left deliberately or otherwise;
- (iv) There appears to be an indifferent and lackluster attitude on the part of senior police officers who might be comparatively well-versed with the science of narcotic drugs or psychotropic substances etc.;
- (v) There is an unexplained silence on the efforts, if any, made after the year 2013-14, to nab the organized drug traffickeers;
- (vi) No evaluation of legal, logical and long-lasting linkage between one case to another by way of credible or admissible evidence appears to have been made.....”

[6] Thereafter, this Court concluded as follows:-

“.....(172) It is indisputable that mere boasting of recovery or unearthing the drug-business worth rupees thousands crore or branding one or the other accused as the kingpin is neither the first nor the last nail in the

coffin of this menace. The high rank police officers, preferably with specialized trainings ought to have taken the call as soon as the first case was detected. There could be better coordination not only between intra-district police but with the agencies of neighbouring States as well. Since the cases in hand have been given so much publicity as if illicit drugs would never surface in the State of Punjab, it is the duty of Police administration to ensure that every case is taken to its logical conclusion. Society has a fundamental human right to live free from drugs. The failure of the prosecution agency to lead credible evidence so as to bring the guilt home in every case would lead to most agonizing disappointment and frustrations in a peace loving citizen. The upper echelons in the Police thus need to remind themselves of their duties as the statesmen of law and order machinery.

(173) Since all the opportunities have not gone out of hand and necessary lacunae can still be filled in through supplementary reports, and false accusations (if any) can be dropped, we direct the State of Punjab, in the interest of complete justice, to constitute a Supervisory Team comprising the following three IPS Officers who shall within *three days* of the receipt of copy of this order take stock of the situation and examine the charge-sheets already filed in each of the subject FIRs:-

- (i) Shri Iswar Singh, IGP-cum-Director, State Narcotic Bureau;
- (ii) Smt. V.Neeraja, IPS, IGP-cum-Director, Vigilance Bureau, Punjab;
- (iii) Shri G. Nageswara Rao, IPS, IGP Crime.

The team shall re-visit the issues illustratively pointed out in para-171 of this order and take the necessary remedial steps.

(174) The District Police or the Investigating Officers related to the NDPS cases which are the subject-matter

of these proceedings, are directed to produce complete records before the aforesaid team, which shall then identify the missing links, lack of proof or the evidence which could be credible but has not been collected or made part of the record for some obvious reasons. If the Supervisory Team finds any material which may assist the Special Courts to arrive at a just decision, the Supervisory Team, shall be at liberty to submit supplementary reports positively by 31st December, 2015. In this process of re-examination, reconsideration or further investigation, if the Supervisory Team is fully satisfied that not even a *prima facie* case is made out against any of the suspects against whom charge-sheet has since been submitted, it shall be free to give such opinion in the supplementary report as directed above.....”

[7] It is a matter of record that the SIT comprising three senior officers in the rank of Inspector General of Police, as constituted vide para No.173 of the order dated 07.10.2015 further investigated all the FIRs in the drugs related cases and has submitted supplementary challans. It is also a matter of record that in few cases, SIT did not find any cogent proof of involvement of the suspects and has recommended their discharge. In most of the cases, however, the SIT has submitted supplementary challans.

[8] The petitioners are amongst those against whom SIT has submitted supplementary challans. Their grievance is that the SIT has failed to consider and has rather over-looked the material piece of evidence as a result of which they are being forced to face the protracted trial. The petitioners thus contend that denial of fair investigation is denial of their fundamental right to life and liberty guaranteed under Article 21 of the

[9] We have pondered over the submissions made by learned counsel for the petitioners who heavily relies upon the previous decision of this Court dated 07.10.2015 in Jagjit Singh Chahal's case (supra) whereunder the SIT was constituted. It is urged that the very purpose of its constitution stands defeated when the SIT has failed to consider the glaring lacunae in the prosecution case.

[10] It is, however, fairly admitted that the trial against most of the petitioners is now at the stage of prosecution evidence and most of the witnesses as per the original challan have been already examined, except the additional witnesses, if any, to be examined pursuant to the supplementary challan submitted by the SIT. The question which thus falls for consideration is whether this Court at this juncture should again direct reinvestigation or further investigation of the cases by the SIT and/or any other agency? The answer to this question, in our considered view, has been effectively given by this Court in the order dated 07.10.2015 passed in Jagjit Singh Chahal case (supra). It would be useful to refer to para-168 of that order which reads as under:-

“.....(168) It is true that the filing of charge-sheet under Section 173 CrPC or framing of charges alone will not divest a Constitutional Court from directing re-investigation by another agency. This Court, however, cannot overlook the fact that on completion of investigation, the police has already submitted charge-sheets in all the cases subject to any supplementary report which may be submitted under Section 173(8) CrPC. In some of the cases, prosecution has already started its evidence. In the absence of any exceptional circumstances where this Court must intervene and do complete justice, we are satisfied that the appropriate

recourse at this stage is to follow the dictum in (i) *Disha* and (ii) *Sudipta Lenka* cases (supra) and hold that the power to refer a case for further investigation to an independent agency like CBI, ought not to be invoked after filing of the charge-sheet by the local police.....”

[11] The trial in these cases has in fact crossed many stages after the order dated 07.10.2015 was passed. As discussed above, majority of the witnesses as per the original challans have been examined. We see no reason to direct further investigation of the cases at this stage especially when the petitioners will get an effective opportunity to lead defence evidence where they can well prove what they have asserted these petitions. It goes without saying that the defence evidence to be led by the petitioners will be dispassionately considered by the trial Court without being influenced by the observations made by this Court in the previous or this order.

[12] The matter can be viewed from yet another angle also. The anxiety of the petitioners to secure exoneration is understandable. But such an expectation is neither legitimate nor it clothes them with a right to seek repeated/fresh/further investigation till such time the Investigating Agency does not hold them innocent and recommend their discharge. If such a recourse is allowed to be adopted, it would amount to asking the SIT to assume the role of Special Judge under the NDPS Act and pronounce the verdict on the petitioners' self-perceived innocence. That is not the scope of a fresh investigation under Section 173(8) or the inherent powers of this Court under Section 482 of Cr.P.C. read with Article 226 of the Constitution.

[13] In the light of the above discussion, read with the detailed

reasons assigned in Jagjit Singh Chahal case (supra), coupled with the fact that trial in the instant cases is near completion and also keeping in view the availability of effective remedy to the petitioners at the time of leading their defence evidence, we are satisfied that no case of re-investigation or further investigation is made out. These petitions are thus dismissed.

[14] The observations made herein-above are only for the purpose of deciding these petitions and shall have no bearing on the merits of the pending trials.

[15] In Criminal Misc.M-No.33141 of 2017 (Avtar Singh @ Tari versus State of Punjab and others), liberty is granted to the petitioner to challenge the order dated 25.05.2017 by way of separate and appropriate proceedings.

[16] Ordered accordingly.

[SURYA KANT]
JUDGE

September 12, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No