

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**CRM-25776-2018 in/and
CRM-M-14853-2017 (O&M)
Date of Decision:-27.7.2018

Chetna Sharma

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ajay Pal Singh Rehan, Advocate for the petitioner.

Ms. Simranjeet Kaur, AAG, Punjab.

Mr. C.B. Goel, Advocate for respondent No.4.

GURVINDER SINGH GILL, J.(Oral)**CRM-25776-2018**

1. In view of the reasons mentioned in the application, the same is allowed subject to all just exceptions and documents Annexures P-6 and P-7 are permitted to be taken on record.

CRM-M-14853-2017

1. The petitioner Chetna Sharma wife of Nitin Sharma has filed this petition seeking issuance of directions so as to ensure a fair and transparent investigation of case FIR No.0021 dated 1.4.2017 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter

referred to as '*the Act*') at Police Station Gardhiwala, District Hoshiarpur and for transferring investigation to some other District and for getting the investigation conducted through some senior IPS Officer.

2. The aforesaid FIR was lodged against Nitin Kumar, husband of the petitioner, on the allegations that on 1.4.2017, when a police party headed by ASI Satpal Singh was patrolling in the area of Gardhiwala to Keshopur Tund, Barada, then a blue colour Innova vehicle bearing registration No.PB-10BM-2400, driven by a Hindu boy, was signaled to stop and that the driver of the said vehicle after stopping the vehicle attempted to run away but was apprehended with the help of the accompanying police officials. Upon inquiry, the said apprehended person disclosed his name as Nitin Kumar. ASI Satpal Singh, after identifying himself extended an offer to Nitin Kumar in terms of Section 50 of the Act but the said Nitin Kumar is said to have reposed confidence in ASI Satpal Singh.
3. It is the case of police that search of Nitin Kumar yielded recovery of a heavy glazed envelope from right pocket of the trousers worn by Nitin Kumar, which was found to contain intoxicating substance weighing 135 grams. Subsequently upon chemical analysis, the said recovered chemical substance was found to contain 'Alprazolam'.
4. The petitioner has averred in the petition that infact her husband Nitin Kumar was forcibly taken by the police on 30.3.2017 from his residence in the morning and that ASI Satpal Singh alongwith some other police officials came to their house at village Johal, Tehsil Dasuya at about 10:30 AM and had forcibly taken away her husband Nitin Kumar and also Innova vehicle

bearing registration no. PB-10-BN-2400, which actually belongs to Sanjeev Kumar, brother-in-law of the petitioner. The petitioner has further stated therein that on 30.3.2017 itself, she alongwith her mother-in-law went to the office of Senior Superintendent of Police, Hoshiarpur but since the Senior Superintendent of Police, Hoshiarpur was not available in his office they appeared before Deputy Superintendent of Police (D), Hoshiarpur, where statement of her mother-in-law (Annexure P-1) and also of the petitioner was recorded and was numbered as 505-PD/30.3.2017. The DSP (D), Hoshiarpur assured the petitioner that in case her husband is found innocent then he will return back home by the evening. However, the husband of the petitioner was not released by the police and she alongwith other members of her family visited Police Station Gardhiwala, District Hoshiarpur a number of times, where they were again assured that Nitin Kumar will be released in case he is found innocent and were also threatened that in case the matter is brought to the notice of the higher authorities then he would be implicated in some serious case.

5. It is the case of the petitioner that it was on 3.4.2017 that the petitioner came to know, after reading a newspaper, that her husband Nitin Kumar has been arrested on 1.4.2017 for having kept some intoxicating substance in his possession. Upon making further inquiries, the petitioner came to know that her husband had been involved in FIR No.0021 dated 1.4.2017 registered under Section 22 of the act at Police Station Gardhiwala, District Hoshiarpur.
6. It is the case of the petitioner that infact the entire incident regarding her husband having been taken by the police from his house on 30.3.2017 has

been recorded in CCTV camera installed at the gate of State Bank of India (earlier State Bank of Patiala), Branch village Johal, Tehsil Dasuya, which is situated at a distance of few yards from her house and that the said CCTV camera would show that the petitioner has been falsely implicated.

7. While issuing notice of motion, this Court on 1.5.2017 had impleaded State Bank of India through its Branch Manager as a respondent upon an oral request made on behalf of the petitioner and had directed that the CCTV footage dated 30.3.2017 recorded in the camera installed in the premises of respondent No.4-bank be preserved and be produced on the next date of hearing.
8. Pursuant to the aforesaid directions, two compact discs (CDs) containing CCTV footage were produced in the Court on 18.7.2017 by learned counsel for respondent No.4-bank. Vide order dated 10.11.2017, copies of compact discs (CDs) containing CCTV footage were provided to the police so as to enable the police to examine the same and to file a fresh status report after viewing the said CCTV footage. A status report was accordingly filed.
9. Vide order dated 13.12.2017, this Court while observing that the police version is contrary to the said CCTV footage directed that the matter needs to be investigated by some other agency other than the local police and accordingly ordered that the matter be entrusted to Kunwar Vijay Pratap Singh, IPS, IG (Intelligence), Chandigarh with a direction to examine the version given by both the parties and report to this Court as to whether the version regarding the arrest of the petitioner and the recovery of intoxicating powder given by the police is correct or as to whether the version put forth

by the petitioner regarding arrest of her husband before the alleged recovery is correct.

10. Pursuant to the issuance of aforesaid directions, the matter was inquired into by Kunwar Vijay Pratap Singh, IPS, IG (Intelligence), Chandigarh and who has submitted his report. A perusal of the said report points out that the version of the petitioner that her husband was forcibly picked up from his residence on 30.3.2017 is more plausible rather than the version of the police that he was nabbed on 1.4.2017. Some of the relevant extracts from the said status report submitted by Kunwar Vijay Pratap Singh, IPS, IG (Intelligence), Chandigarh read as follows:-

“7. That the accused of this case Nitin Kumar (on bail) has also been examined and his statement has been duly recorded. He has stated that he had talked to his mother while in custody through mobile phone number 9463117518 of HC Ranjit Singh of CIA Staff, Hoshiarpur.

8. Besides, Smt. Kanta Devi, mother of accused, has also got her statement recorded during the investigation

9. That HC Ranjit Singh of CIA Staff Hoshiarpur has also been examined in this case and his statement has been duly recorded. He has also stated that he had made a call on mobile number of a family member of the accused from his mobile number and facilitated accused Nitin Kumar to talk with a member of his family. On the analysis of call details, it has been found that the following two calls have been made from the mobile phone of HC Ranjit Singh (9463117518) to Smt. Kanta Devi (9914439808):

31.03.2018 (Time 16.19.39) and **01.04.2017** (Time 20.07.36)

10.

11.

12. That it has also been found during the investigation that Smt. Kanta Devi, mother of accused, had filed an application in the office of DSP Investigation (Hoshiarpur) on 30.03.2017 regarding arrest of his son by the police party.

13.

14. That on the basis of above-mentioned facts and circumstances, it is concluded that the version of the FIR does not go beyond reasonable doubt and thus benefit of doubt goes in favour of the accused. As such, the FIR deserves to be cancelled/quashed.

That in the light of above-mentioned facts and circumstances, it is prayed to pass further directions in this case in the interest of justice.”

11. The aforesaid report clearly indicates that the petitioner was already in police custody even before 1.4.2017 i.e. the date of alleged recovery of contraband which is fully corroborated from the fact that Head Constable Ranjit Singh has admitted that he had facilitated a telephone call from his mobile phone to be made by Nitin Kumar so as to talk to his family. The call details clearly show that a call had been made on 31.3.2017 from the mobile phone of Head Constable Ranjit Singh (9463117518) to the mobile number of Smt. Kanta Devi (9914439808), mother of the accused. The said call was made at 4:19 PM.

12. In addition to the aforesaid telephone call details, it is also borne on record that Smt. Kanta Devi had submitted an application to the DSP(D), Hoshiarpur on 30.3.2017 itself regarding arrest of her son by the police. Kunwar Vijay Pratap Singh, IPS, IG (Intelligence), Chandigarh, after examining the entire case and after recording statements of all concerned has reached at a conclusion that the FIR deserves to be cancelled/quashed.

13. This Court does not find any reason to differ with the aforesaid findings recorded by IG (Intelligence), Chandigarh. It is clearly borne out that Nitin Kumar had been picked up from his residence on 30.3.2017 and was falsely implicated in a case of alleged recovery of contraband vide FIR No.0021 dated 1.4.2017 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Gardhiwala, District Hoshiarpur. Consequently, the FIR No.0021 dated 1.4.2017 registered under Section 22 of Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Gardhiwala, District Hoshiarpur alongwith all consequential proceedings emanating therefrom are hereby quashed.
14. The Senior Superintendent of Police, Hoshiarpur is directed to take appropriate action against all concerned in connection with lodging of the aforesaid false FIR.
15. The present case is an example of blatant misuse of power by police officials. Those at the helm of affairs need to ensure that such misuse is checked. Installing CCTV cameras at barricades raised by the police and ensuring videography of raids especially when conducted upon receipt of prior information could be mulled given the fact that such gadgetary is readily available nowadays.
16. A copy of this judgment be sent to the Director General of Police, Punjab; Director General of Police, Haryana and Director General of Police, U.T. Chandigarh with special attention to para no.15.
17. The present petition stands disposed of accordingly.

27.7.2018

pankaj

Whether speaking/reasoned

Whether reportable

(Gurvinder Singh Gill)
Judge

Yes/No

Yes/No