

CrI. Misc. No. M-1710 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CrI. Misc. No. M-1710 of 2017

DATE OF DECISION:25.7.2018

Gian Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. JS Bedi, Senior Advocate with
Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. C.L. Pawar, Senior DAG, Punjab.

Ms. Tanushree Gupta, DAG, Haryana.

Ms. Varsha Gupta, Advocate for
Mr. Sumeet Goel, Advocate for CBI.

DAYA CHAUDHARY, J.

Petitioner-Gian Kaur has filed the present petition under Section 482 Cr.P.C. for seeking fair investigation in case FIR No. 160 dated 29.7.2016 registered under Sections 15/25 of the NDPS Act at Police Station Mandi Gobindgarh, District Fatehgarh Sahib on the ground that her husband, namely, Boota Singh has falsely been implicated in the case after taking him into custody on 27.7.2016 from Aman Dhaba, Shahabad. A further prayer has also been made by the petitioner that the investigation be conducted by an independent agency or CBI as allegations have been

levelled against the police officials for illegally kidnapping/detaining and planting a false case against her husband.

Briefly, the facts of the case, as made out in the present petition are that husband of the petitioner, namely, Boota Singh has been implicated in number of cases of NDPS Act but when he has been allowed bail in said cases, the Punjab police has again started harassing the family members of the petitioner especially her husband Boota Singh. It has also been mentioned in the petition that the husband of the petitioner was made accused in a case where recovery was effected from some other persons. However, he was allowed bail in that case vide order dated 1.4.2015 on the ground that no recovery was effected from him. After grant of bail in aforesaid matter, the husband of the petitioner was again implicated in case FIR No. 12 dated 26.6.2015 registered under Sections 21/25/29 of NDPS Act at Police Station Special Operation Cell, Amritsar, wherein, also recovery was effected from co-accused Jaspal Singh and he was released on bail vide order dated 16.2.2016. It is also an averment in the present petition that after release of her husband on bail, the police officials of Special Staff, Jalandhar including SI Surinder Singh and officials of CIA staff, Fazilka raided the house of the petitioner. Her husband submitted a complaint to the Director General of Police, Punjab stating therein that the police officials were raiding the house and harassing the petitioner and his family members. When no action was taken on the complaint, the husband of the petitioner approached this Court by way of filing Crl. Misc. No. M-14900 of 2016 for not causing harassment, humiliation and torture by the police officials praying for protection of life and liberty at the instance of police officials. Before the date of hearing in the aforesaid case, on

27.7.2016, the husband of the petitioner along with his aunt (bua)-Smt. Prem Kaur and her niece-Ms. Baljinder Kaur was illegally picked up by the police officials of CIA staff Sirhind from Aman Dhaba, Shahabad (Haryana). On coming to know about the incident, the petitioner approached this Court by way of filing Criminal Writ Petition No. 1022 of 2016 for release of her husband, namely, Boota Singh from the illegal custody of the police officials. Notice of motion was issued on 28.7.2016 and warrant officer was also ordered to be appointed. The Warrant Officer on the basis of search conducted by him on 28.7.2016 and 29.7.2016 submitted his report. However, he could not find the husband of the petitioner. As per case of the petitioner, her husband was picked up from Aman Dhaba, Shahabad on 27.7.2016, therefore, the warrant officer went to Shahabad and inquired from the persons who were on duty at Aman Dhaba and came to know that some persons from Punjab Police were in search of Boota Singh and checked the register of the Dhabha. It has been mentioned in the report of Warrant Officer that the vehicle Innova parked in the Dhabha was picked up by Mittal Crane Service on the next morning. As per case of the petitioner, present FIR was registered on 29.7.2016 and her husband was shown to be arrested along with Rajinder Singh and Abdul Gaffar, both residents of Malerkotla. The husband of the petitioner was shown to be sitting in between the cabin of the Canter from which the recovery was effected. It is also an averment that her husband was picked up along with two ladies, namely, Mrs. Prem Kaur and Ms. Baljinder Kaur but both of them were released after eight days of illegal detention by police of CIA staff Sirhind. The Innova vehicle, which was picked up by Mittal Crane Service from Aman Dhaba, Shahabad was also released by the CIA

Staff, Sirhind to the family members of the husband of the petitioner.

In support of the pleadings made in the petition, the petitioner has placed on record the toll tax receipt of vehicle No. PB-08CJ-1883 while going towards Shahabad. A certificate in this regard has also been given by the Manager of Toll Plaza in civil suit filed before the Court at Rajpura, wherein, no interim order was passed to preserve the CCTV footage of Aman Dhaba and Toll Plaza. Thereafter, Smt. Prem Kaur, who was detained along with husband of the petitioner filed Civil Revision No. 5410 of 2016 before this Court, wherein, a direction was issued to preserve CCTV footage after issuance of notice of motion.

Learned senior counsel for the petitioner submits that as per report of the warrant officer and CCTV footage, it is clear that husband of the petitioner was picked up on 27.7.2016 and he has falsely been implicated in a case of NDPS Act on 29.7.2016. Even the vehicle, which was picked up by the police was also released to the family members of the husband of the petitioner. Learned senior counsel further submits that not only husband of the petitioner but two ladies were also picked up from Aman Dhaba but said two ladies were released after eight days of illegal detention. Learned senior counsel also submits that the petitioner was not provided CCTV footage of the date of occurrence from Aman Dhaba but she got the photographs of the day when the vehicle Innova was picked up by Mittal Crane Service from Aman Dhabha, Shahabad and the video footage of the vehicle crossing the Toll Plaza. Copies of aforementioned Photographs of Aman Dhaba and Toll Plaza are annexed as Annexures P-13 and P-14. It is also the submission of learned senior counsel for the petitioner that Smt. Prem Kaur and her niece Baljinder Kaur who were also

picked up from Aman Dhaba, Shahabad are the eye witnesses of the occurrence and they have narrated the entire story in the representation submitted to the Director General of Police, Punjab and Senior Superintendent of Police, Fatehgarh Sahib. Learned senior counsel also submits that not only from the statements of said two ladies, who were eye witnesses but from the report of the Warrant Officer, it is clear that it is a case of false implication. The investigating agency has also not taken into consideration the documents supplied by the petitioner and without verifying said documents, the police is going to file challan against husband of the petitioner.

Learned counsel for the respondent-State submits that false allegations have been levelled against the police officials and present petition has been filed just to put pressure upon the investigating agency and to obtain a favourable order from this Court by twisting/distorting the version besides concealing the material facts. The recovery was effected from husband of the petitioner which was duly proved and thereafter challan was presented under Section 173 Cr.P.C. before the competent authority and thereafter the case was adjourned to 14.2.2017 for framing of charges. Learned counsel further submits that the recovery in the present FIR was effected from the canter, which was being driven by Rajinder Singh @ Sweety, Abdul Gaffar @ Abdul and husband of the petitioner, namely, Boota Singh. The samples recovered were sent for chemical examination to the FSL and as per report dated 22.11.2016, the contraband was found to be of poppy husk. The complaint made by Smt. Prem Kaur was inquired into by DSP (Inv.), District Fatehgarh Sahib. During the course of inquiry, summons were sent to the applicant to join inquiry but she refused to

receive summon and did not join the inquiry. It was found during inquiry that the FIR was rightly registered against husband of the petitioner. Learned State counsel also submits that total six cases of smuggling of liquor, poppy husk powder and opium stood registered against husband of the petitioner at difference police stations. In the inquiry, the allegations levelled against CIA staff were found to be false and baseless. Even the allegations of illegal detention were found to be false and the recommendation was made to file the complaint in the office. The report of DSP (Inv.), District Fatehgarh Sahib was perused and considered by the SSP, Fatehgarh Sahib and while agreeing with the same, the complaint was filed. At the end, learned State counsel submits that warrant officer appointed by this Court conducted raid at police stations as pointed out by the petitioner but her husband was not found to be illegally detained by the police.

Heard the arguments advanced by learned senior counsel for the petitioner as well as State and have also gone through the contents of the FIR and other documents available on the file.

In the present petition, a prayer has been made for seeking fair investigation of the case by raising certain grounds to show that it was a case of false implication. As per case of the petitioner, on 27.7.2016 the husband of the petitioner along with his aunt (bua)-Smt. Prem Kaur and her niece-Ms. Baljinder Kaur was illegally picked up by the police officials of CIA staff Sirhind from Aman Dhaba, Shahabad. The petitioner has placed on record CCTV footage of Aman Dhaba and Toll Plaza to show the presence of her husband at aforesaid Dhaba. Certain photographs have also been placed on record to show that Innova car of the husband of the

petitioner was picked from Aman Dhaba by Mittal Crane Services. Smt. Prem Kaur and her niece-Ms. Baljinder Kaur have been stated to be the eye witnesses of the incident as they were accompanying the husband of the petitioner. Thereafter, on 28.7.2016, Criminal Writ Petition No. 1022 of 2016 was filed by the petitioner, wherein, notice of motion was issued. Warrant Officer was also ordered to be appointed on the same day, who conducted raids at different places but the husband of the petitioner could not be traced out. FIR was registered against the husband of the petitioner under NDPS Act at Police Station Mandi Gobindgarh on 29.7.2016, .

The submissions made by learned counsel for the petitioner have been denied by learned State counsel on the ground that not only the facts were twisted but certain material facts were also concealed. Heavy recovery has been effected from the husband of the petitioner.

In the present case, not only challan has been presented but charges have also been framed and now the case is fixed for hearing on 25.7.2018. Different stands have been taken from both the sides. There is no connecting link in the story made by learned counsel for the petitioner as well as prosecution. Disputed questions of facts are involved in the case.

It is for the prosecution to prove the allegations against the husband of the petitioner that he was involved in commission of offence under the NDPS Act. Many cases under NDPS Act are pending against the husband of the petitioner at different police stations. In the present case also huge recovery has been effected from him and it cannot be said that in past also husband of the petitioner was falsely implicated. The version put up by the petitioner is also matter of evidence and the accused will get opportunity to cross examine the prosecution witnesses. In case some

documents are there to show that the husband of the petitioner was illegally picked up by the police, the same can be produced in the defence evidence. It would not be in the interest of justice in case something is said on merit of the case at this stage. Certain disputed questions of facts i.e. as to why the innova car, which was stated to be parked in the parking area of Aman Dhaba, Shahabad was picked up/removed by the Mittal Crane Service and who were the occupants of the car while crossing the toll plaza are to be determined by way of leading evidence. The whole incident is between the period from 27.7.2016 to 29.7.2016. The case is fixed before the trial Court for recording of the statements of the prosecution witnesses. The prosecution has to prove that the accused in involved in the commission of offence beyond any reasonable doubt.

Bombay High Court in the case of **Kaluram Chaudhary Vs. Union of India and others** 2016 ALL MR (Cri) 4866 has held as under:-

“7. In effect, the accused are seeking transfer of investigation on the basis of their defence of alibi. What the accused say is that they were not at the places alleged in the police panchanama at the relevant time, but elsewhere. The proof of such a plea is a matter of trial. The accused will have to prove their defence at an appropriate stage in accordance with law. The CCTV footage, the cell records and everything else they are today relying on will have to be strictly proved in accordance with law. There is no question of all this material being looked into at this stage. It will have to be considered when the accused are called upon to enter their defence under [Section 233](#) of the Code of Criminal Procedure, after the

prosecution has led its evidence, and not now. After all we are today at the stage of framing of charges. As the Supreme Court has held in [Hem Chand vs. State of Jharkhand \(2008\) 5 SCC 113: AIR 2008 SC 1903](#), the Court at the stage of framing of charge exercises a limited jurisdiction; It only sees if a prima facie case has been made out. The concern of the Court is whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during the investigation. The Court does not delve deep into the matter for the purpose of appreciating evidence and would not ordinarily consider as to whether the accused would be able to establish his defence, if any.

8. Learned Counsel for the Petitioners submit that though at the stage of framing of charge, the trial court can only look at the material produced by the investigating agency and not the defence of the accused, the material produced by the accused can be considered by this Court at the stage of an application under [Section 482](#) of the Criminal Procedure Code. In the case of *State of Orissa Vs. Debendra Nath Padhi*, 2005 (1) SCC 568, the Supreme Court did affirm the unlimited width of the power of the High Court under [Section 482](#) of the Code and [Article 226](#) of the Constitution to relieve the accused of a trial in the face of material of unimpeachable character of sterling quality produced by the accused, so as to prevent abuse of the process of court or otherwise secure the ends of justice.

9. Now the question is whether the evidence brought before the

Court by the accused here is really of "unimpeachable character of sterling quality" so that the prosecution's case really does not call for a trial or it would be an abuse of the process to make the accused stand the trial. We think not. Firstly, the material is not such as needs no explanation. It is not something which is self-evident.

Besides, the call records as well as the CCTV footage and electronic record of whatsapp chats are all matters of evidence, which will have to be strictly proved in accordance with law. Thirdly, it may even be possible to explain away some of the material. At this prima facie stage we cannot view it as conveying unimpeachability of a sterling character.

In case of persons against whom a prima facie case is made out and a charge-sheet is also filed before the competent Court, it is for that Court, which will then deal with that case on merits in accordance with law, as has been held by Hon'ble the Apex Court in the case of **Union of India Vs. Sushil Kumar Modi** (1998) 8 SCC 661.

The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in mind of the complainant or the accused that investigation was not fair and has been carried out with some ulterior motive. The investigating officer is not merely the person to strengthen the case of the prosecution that will enable the Court to record a conviction but to bring out the real version to know the truth. The investigating agencies are the guardians of the liberty of innocent citizen and therefore cast upon a duty on the investigating

officer to ensure that an innocent person should not suffer from unnecessary harassment or false implication. However, the accused person must not be given an undue advantage and investigation is hardly interfered with or influenced by the Courts. The investigation must be carried out with fairness irrespective of the status of the accused or complainant. Every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the Rules of law as required under Articles 19,20 and 21 of the Constitution of India.

It is also a settled proposition of law that the Court is having inherent powers under Section 482 Cr.P.C. to transfer the investigation at any stage under the provisions of Cr.P.C. do not limit or affect the inherent powers of this Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of process of Court or otherwise to secure the ends of justice.

It is not a case where the contraband has been planted. It is a case of simple alibi, which the accused will have to prove before the trial Court.

Hon'ble the Apex Court in the case of **K.V. Rajendran Vs. Superintendent of Police, CBCID South Zone, Chennai and others** 2013

(12) SCC 480 has held as under:-

“The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and

exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian & Ors. v. Union of India & Ors., (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. & Ors., AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab & Ors., AIR 1994 SC 1023; Vineet Narain & Ors., v. Union of India & Anr., AIR 1996 SC 3386; Union of India & Ors. v. Sushil Kumar Modi & Ors., AIR 1997 SC 314; Disha v. State of Gujarat & Ors., AIR 2011 SC 3168; Rajender Singh Pathania & Ors. v. State (NCT of Delhi) & Ors., (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar & Ors. Etc., 2012 (1) RCR (Criminal) 126: 2011 (6) Recent Apex Judgments (R.A.J.) 303).

In State of West Bengal v. Committee for Protection of

Democratic Rights, 2010 (2) RCR (Criminal) 141, a Constitution Bench of Hon'ble the Apex Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.

In **Sakiri Vasu v. State of UP**, 2008 (1) RCR (Criminal) 392 has held:-

“This Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.”

Admittedly, the Court can exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI but only in rare and exceptional cases where it is necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased.

In the present case, the petitioner is seeking transfer of investigation on the basis of plea of alibi stating that the accused was present somewhere else. The proof of such is a matter of trial. The accused will have to prove his defence at an appropriate stage in accordance with

law. The CCTV footage and everything else relied upon by the petitioner will have to be proved in accordance with law.

Accordingly, I find no merit in the contentions made by learned senior counsel for the petitioner and the present petition being devoid of any merit is hereby dismissed.

25.7.2018
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes