

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M No.27810 of 2018
Decided on: 28.09.2018**

Jatinder Singh @ Lakha

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.K. Bawa, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

On 13.09.2018, the following order was passed by this
Court:-

“Prayer in this petition is for quashing of FIR No.262 dated 01.08.2006 registered under Sections 8, 21, 24, 25, 29, 60 and 61 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Nakodar, District Jalandhar.

Counsel for the petitioner has submitted that the petitioner is residing abroad since 2005 and presently, he is a Canadian citizen. It is further submitted that on the date of registration of the FIR, the petitioner was not in India and in this regard, he has relied upon the entries made in the passport of the petitioner (Annexures P5 and P6).

Counsel for the petitioner has also submitted that the name of the petitioner is Jatinder Singh @ Lakha whereas in the FIR, he is named as Lakhwinder Singh @

Lakha and due to this reason, the petitioner was not aware about his involvement in the present FIR.

Counsel for the petitioner has further argued that the petitioner was later on declared as proclaimed offender and in the meantime, 04 of his co-accused namely Mandeep Singh, Hardeep Singh, Kuldeep Singh and Dharampal faced the full length trial before the Judge, Special Court, Jalandhar, who vide order dated 31.03.2014 (Annexure P4) acquitted them of the charge observing as under:-

“....Accordingly when the case in hand is examined in view of what has been laid down by Hon'ble Supreme Court in its pronouncements, it is found that prosecution has no case at all what to talk of establishing its charges beyond doubts. All the witnesses who have been examined by the prosecution in order to prove the circumstances connecting accused with the conspiracy and commission of crime have failed to support its case and have turned hostile. They were then subjected to their lengthy cross-examination by the Addl. P.P. but nothing favourable and supporting to the prosecution case could be extracted from them. The prosecution thus failed to connect the accused with charges and commission of offence. It also could not be proved on record if any offence was even committed. No evidence came forth showing if there was a conspiracy what to talk of accused being party to that. No investigation rather was conducted in that direction to unearth any conspiracy and the fact if it existed even. As conspiracy itself remained unproved to be thee, no question could arise regarding involvement of accused in that. The present one is the case where there is no investigation conducted to secure circumstances forming any chain of events connecting accused with the charges. The investigation conducted in the case is not only defective and improper but is highly lacking also. It could not be shown or proven that the recovered vehicles were used or if those were even owned by the accused. Likewise recovery of a diary from accused Mandeep Singh is of no

consequences as it failed to prove anything against accused or any investigation was done with regard to its contents. Rather PW3 Investigating Officer in his cross-examination categorically admitted that none of the vehicles were owned by accused Mandeep Singh nor any recovery whatsoever was effected from his possession. No recover of any illegal substance was effected from the vehicles. Not to speak of missing links and gaps in the chain of events, no event and its taking place has even been proved.

11. As an outcome of above discussion, this Court finds no grounds to conclude about the guilt of the accused or if the prosecution has been able to prove its charges. They are accordingly acquitted of the charges framed against them. File be consigned to the record room.”

Counsel for the petitioner has further argued that subsequently one another accused namely Bohar Singh, who was also declared as proclaimed offender was arrested and he also faced the full length trial and was also acquitted by the Judge, Special Court, Jalandhar vide judgment dated 15.11.2017 (Annexure P7). The operative part of the said judgment is reproduced as under:-

“25. So from the above said discussion, it is clear that in the present case prosecution had examined 11 witnesses. PW2 Jagjit Singh, PW4 Varinderjit Singh @ Jagga, PW8 Ranjit Singh and PW10 Paramjit Singh had not supported the case of the prosecution, rather they turned hostile. Prosecution had also examined PW1 ASI Mohinder Pal, who arrested accused Bohar Singh, PW3 ASI Som Nath who arrested accused Kuldeep Singh @ K.S. Makhan, PW5 Jatinder Singh brought the record from the office of RTA, Jalandhar, PW6 ASI Harjit Singh arrested accused Mandeep Singh. Prosecution had also examined PW7 Daljinder Singh Dhillon, SSP complainant, but he failed to link accused Bohar Singh with the present case. Prosecution had examined PW9 DSP Paramjit Singh, but he had arrested accused Mandeep Singh. Prosecution examined PW11 Jagjit Singh who

brought the record relating to vehicle bearing No.PB51-7288. So from the perusal of the statements of witnesses and documents placed on the file, it is clear that prosecution stated that they received information that accused Bohar Singh used to purchase, sell or transport heroin to various persons, but prosecution failed to prove the same. Moreover, nothing was recovered from the possession of accused Bohar Singh. Prosecution had not examined any witness who had purchased heroin from Bohar Singh. Similarly prosecution had not examined any person who can say that he had purchased heroin from Bohar Singh. Present case was registered against the accused on the ground that accused Bohar Singh was member of criminal conspiracy, but prosecution failed to prove the criminal conspiracy of accused Bohar Singh. Similarly prosecution stated that accused Bohar Singh use to purchase, sell and transport heroin in various vehicles, but prosecution had not led any evidence in this respect. Prosecution had not proved that from whom accused Bohar Singh purchased heroin. Similarly prosecution failed to prove that to whom accused Bohar Singh sold heroin. Similarly prosecution failed to prove that on which date, month and year and in which vehicles accused Bohar Singh transported heroin. So no one had seen accused Bohar Singh while purchasing, selling or transporting heroin. Moreover, vehicles stated by prosecution does not stands in the name of Bohar Singh. Moreover, above said vehicles were not recovered from the possession of accused Bohar Singh. So prosecution failed to prove that how prosecution link accused Bohar Singh with the case bearing FIR No.262 dated 1.8.2006. So prosecution had examined 11 witnesses, but all the prosecution witnesses failed to prove that accused Bohar Singh is indulged in the activity of purchasing, selling or transporting heroin.

26. *So from the above said discussion, it is clear that prosecution has miserably failed to prove the case against the accused Bohar Singh beyond shadow of reasonable doubt. Hence, accused Bohar Singh is acquitted of the charges framed against him under Section 29 of the NDPS Act by giving him*

benefit of doubt. The case property be disposed of under rules, after the expiry of period of appeal or revision, if any. File be consigned to Judicial Record Room.”

Counsel for the petitioner has also submitted that on coming to know that the present FIR is pending against the petitioner, he has returned back to India and vide order dated 17.04.2018 passed in CRM-M No.13552 of 2018, he was granted anticipatory bail, noticing the aforesaid facts and the petitioner has appeared before the Investigating Officer and joined the investigation.

Counsel for the petitioner has, thus, submitted that with the same set of allegations, twice 02 sets of the accused persons have faced the trial and in both the trial, the accused persons were acquitted by the Judge, Special Court, Jalandhar, holding that the prosecution has failed to prove the case and the evidence against the petitioner is substantively the same evidence, which has already come on record in the aforesaid trial, acquitting the aforesaid accused persons.

*Counsel for the petitioner has relied upon the Division Bench judgment of this Court “**Sudo Mandal @ Diwarak Mandal vs State of Punjab**”, 2011(2) RCR (Criminal) 453, to submit that where on similar set of allegations, the accused persons, who faced the trial stands acquitted, no purpose will be served in putting the another accused person subsequently to face the trial.*

Notice of motion.

Mr. Joginder Pal Ratra, DAG, Punjab, who is present in the Court accepts notice on behalf of the respondent.

Counsel for the petitioner is directed to supply a copy of paperbook to counsel for the State during course of the day.

List again on 28.09.2018.

In the meantime, the petitioner is directed to deposit the costs of Rs.1,00,000/- before the Judge, Special Court, Jalandhar, which shall be deposited in the Government Treasury under the head to be nominated by the Court, for delaying the proceedings in the case.”

Counsel for the petitioner has submitted that in pursuance to the aforesaid order, the petitioner has already deposited the costs of Rs.1 lac on 21.09.2018 with the trial Court and has placed on record a photocopy of the receipt (Mark 'A').

Counsel for the petitioner has further submitted that at the time when the impugned FIR was registered, the petitioner was residing abroad and on coming to know about the pendency of the criminal proceedings against him, he came back to India and surrendered before the trial Court and was released on bail. It is further submitted that 04 accused persons namely Mandeep Singh @ Mani, Hardeep Singh @ Kaka, Kuldeep Singh @ K.S. Makhan and Dharampal @ Dharma, have faced the full length trial and the Judge, Special Court, Jalandhar vide judgment dated 31.03.2014 (Annexure P4) has recorded a categorical finding that since the material prosecution witnesses were declared hostile and no recovery of any illegal substance was effected from the petitioners, the prosecution has failed to prove the charge and accordingly, they were acquitted.

Counsel for the petitioner has further argued that even subsequently one more accused namely Bohar Singh also faced the full length trial and he was also acquitted by the Judge, Special Court, Jalandhar vide judgment dated 15.11.2017 (Annexure P7) as on the same set of evidence, the trial Court has recorded a finding that though

the prosecution has examined 11 witnesses but all of them have failed to prove that Bohar Singh was indulged in the activity of purchasing, selling or transporting any contraband.

Counsel for the petitioner has relied upon the entries made in the passport of the petitioner (Annexures P5 and P6) wherein the Minister of Citizenship and Immigration, Canada has granted citizenship to the petitioner and as per the passport, the petitioner is presently holding a Canadian Passport.

Counsel for the petitioner has also relied upon the judgment ***“Sudo Mandal @ Diwarak Mandal vs State of Punjab”***, **2011(2) RCR (Criminal) 453**, to submit that 02 sets of accused persons, who have faced different trials, on the same set of evidence, who are acquitted by the Courts holding that the prosecution has miserably failed to lead any evidence to connect them or to lead any evidence that the accused persons were involved in any illegal activity, the prosecution of the petitioner, in pursuance to the impugned FIR and on the basis of the same set of allegations will be nothing but misuse of process of law.

Counsel for the State, on instructions from ASI Resham Singh, has not disputed the factual position that the aforesaid persons vide judgments dated 31.03.2014 and 15.11.2017 passed by the Judge, Special Court, Jalandhar stands acquitted and apparently, no appeal is pending against the same.

After hearing the counsel for the parties, I find merit in the present petition for the following reasons:-

1. The petitioner was residing abroad, at the time

when the impugned FIR was registered and on coming to know about the pendency of the criminal proceedings against him, he came back to India and surrendered before the trial Court and was released on bail.

2. The entries made in the passport of the petitioner (Annexures P5 and P6) wherein the Minister of Citizenship and Immigration, Canada has granted citizenship to the petitioner and as per the passport, the petitioner is presently holding a Canadian Passport.

3. The co-accused of the petitioner named above have already been acquitted by the Judge, Special Court, Jalandhar vide judgments dated 31.03.2014 and 15.11.2017.

For the foregoing reasons and in view of the ratio of law laid down in *Sudo Mandal's case (supra)*, this petition is allowed. FIR No.262 dated 01.08.2006, registered under Sections 8, 21, 24, 25, 29, 60 and 61 of the NDPS Act at Police Station Nakodar, District Jalandhar and subsequent proceedings arising therefrom are quashed *qua* the petitioner – Jatinder Singh @ Lakha.

(ARVIND SINGH SANGWAN)
JUDGE

28.09.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No