

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-3988-2016 (O&M)

Date of decision: 12.02.2018

Gurlal Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.S. Virk, Advocate for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of the order dated 19.06.2015 passed by Judge, Special Court, Mansa (Annexure P-3), vide which the application for releasing 03 licensed weapons i.e. gun .12 bore double barrel along with 09 cartridges, rifle 315 bore along with 05 cartridges and revolver .32 bore along with 05 cartridges, along with licence, was dismissed.

Counsel for the petitioner has submitted that during the investigation of FIR No.80 dated 17.07.2014 registered under Sections 21/22/25 of NDPS Act at Police Station Sardulgarh, District Mansa, the aforesaid weapons were taken in possession. Counsel for the petitioner has further submitted that FIR (Annexure P-1) was registered on the basis of a secret information that petitioner is coming in his Zen car bearing registration No.HR-26Y-8778, black colour and is supplying intoxicants in

the villages and if the raid is conducted, he will be overpowered. Counsel for the petitioner has drawn attention towards the report under Section 173 Cr.P.C., wherein during the investigation, the police has found that he was apprehended along with Zen car and 03 weapons, which are registered in his name and were lying on the back seat of the car. It is thus submitted that there is no allegation that these weapons were either used or misused for commission of any offence and these have been taken in possession simply because that the petitioner was carrying these weapons along with him in the car.

Counsel for the petitioner has further drawn attention to the order dated 19.05.2015, vide which the charges under Section 25A as well as Section 22 of the NDPS Act were framed against the petitioner and he is facing the trial. It is further submitted that while passing the impugned order dated 19.06.2015, the trial Court has not recorded any reason for declining to release the aforesaid weapons on superdari to the petitioner despite the fact that a report was received from the concerned police station, in which it was not stated that the police has any objection about non-releasing of the weapons.

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division Sardulgarh, District Mansa is already filed and as per para No.1 of the preliminary submissions, the petitioner is involved in following 04 FIRs: -

1. *FIR No.27 dated 25.02.2004 under Sections 364, 302, 120-B, 34 IPC, Police Station City Dabwali, District Sirsa.*
2. *FIR No.56 dated 19.02.2006 under Sections 307, 148, 149 IPC and Sections 25, 27, 54, 59 of Arms Act, Police Station City*

Dabwali, District Sirsa.

3. *FIR No.30 dated 25.03.2006 under Sections 21/61/85 of NDPS Act, Police Station Rama, District Bathinda.*
4. *FIR No.122 dated 13.08.2013 dated 13.08.2013 under Sections 21/61/85 of NDPS Act, Police Station Sirhind, District Fatehgarh Sahib.*

Counsel for the petitioner states at bar that in FIR No.27, FIR No.56 and in FIR No.30, the petitioner has faced the full length trial and he has been acquitted. It is further submitted that the weapons were not involved in the aforesaid FIRs, as the police never asked the petitioner to deposit the weapons, when these FIRs were pending and the same pertain to the years 2004 to 2006. It is also submitted that 4th FIR No.122 under the NDPS Act is pending and in that case also, there is no allegation of misuse of the aforesaid weapons.

Counsel for the petitioner has further submitted that the weapons are now lying deposited in the malkhana of Police Station Sardulgarh, District Mansa and the petitioner requires the same for his personal safety.

Learned State counsel, on instructions from ASI Deep Singh, has not disputed the factual position, however, has submitted that in the present case, trial is at the stage of recording of the evidence and some evidence has already been recorded.

After hearing learned counsel for the parties, I find merit in the present petition.

A careful perusal of the present FIR as well as report under Section 173 Cr.P.C. shows that the allegations against the petitioner, apart

from the allegations under the NDPS Act, qua the weapons are that the same were lying on the rear seat of the Zen car, when the petitioner was allegedly apprehended by the police.

It is the further case of the police that during investigation of the case, said weapons were recovered and are lying in the malkhana of Police Station Sardulgarh, District Mansa. No reasonable explanation has been given by the DSP in his affidavit that the petitioner, who is admitted a licence holder of the said weapons, has ever misused the same in commission of any crime. Even there is no averment in the affidavit that in case the weapons are released on superdari in favour of the petitioner, there is an apprehension of breach of peace or misuse of the same. Three FIRs referred to in the affidavit pertain to the years 2004 to 2006 and according to counsel for the petitioner that petitioner has already been acquitted in these three FIRs and in 4th FIR, he is facing the trial under the NDPS Act.

For the reasons stated above, the impugned order dated 19.06.2015 (Annexure P-3) passed by the Judge, Special Court, Mansa is set aside and the trial Court is directed to release the aforesaid weapons along with licence to the petitioner on superdari on furnishing the requisite surety/bonds, after obtaining fresh report from the concerned police stations in this regard.

With the abovesaid observations, this petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

12.02.2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No