

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-6451 of 2018

Date of Decision: 06.12.2018

Ashok Kumar @ Shoki

...Petitioner

Vs.

State of Punjab and other

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. B. S. Kathuria, Advocate,
for the petitioner.

Mr. Sukhpreet Singh, Advocate, for
Mr. Vishal Gupta, Advocate,
for respondent no.4.

Mr. Daldeep Singh, DAG, Punjab.

Amol Rattan Singh, J.

By this petition, the petitioner seeks to invoke the jurisdiction of this Court under Section 438 of the Cr.P.C., thereby seeking anticipatory bail for himself, pursuant to FIR no.7 have been registered against him at Police Station Mukandpur, District Shaheed Bhagat Singh Nagar, on 23.01.2018, alleging therein the commission of an offence punishable under Section 22 of the NDPS Act, 1985.

The petition first having come up for hearing on 16.02.2018, upon counsel for the petitioner having submitted to this court that the petitioner was actually never apprehended at the spot from where he was shown to be apprehended in the FIR, and even the car from which recovery of contraband is stated to have been made, not belonging to him, while issuing the notice of motion to the respondent State, the petitioner had been ordered

to be admitted to interim bail (in case he was sought to be arrested), upon his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Area Magistrate, with him held bound to abide by the conditions stipulated in sub-section (2) of Section 438 of the Cr.P.C.

Thereafter, as it is now seen, this case has been prolonged unnecessarily by this Court (this Bench) upon detailed arguments having been addressed each time by learned counsel on the innocence of the petitioner and his allegedly having been falsely involved in the case, with the contention of the petitioner being that he was being 'targeted' by the police of Police Station Mukandpur on account of 'past history', including him having instituted proceedings against a Sub-Inspector earlier posted in the police station.

Consequently, detailed orders were passed on each date by this Court, directing various police authorities of the State, including even the Director General of Police, Punjab and the Senior Superintendent of Police of SBS Nagar, to file affidavits, especially because one of the serious allegations made by the petitioner against the police was that cameras installed in the village of the petitioner were forcibly removed by the police at the instructions of the SSP, only to ensure that 'raids' of the police at the house of the petitioner and other persons, were not documented.

An otherwise unconnected issue, but arising out of the alleged high handedness of police, had also been taken up in this petition, with the Director General of Police, Punjab, directed to state as to why police personnel should not carry body cameras on their persons, so that apprehension of criminals/suspects are duly recorded, leaving very little room for doubt as to the manner of apprehension of any accused, as also of any recovery of contraband etc. made from her/him.

However, this court having been informed later that the Supreme Court was already seized of that issue, with certain directions having been given by their Lordships, naturally, thereafter that matter had not been pursued further in this petition.

However, directions also having been issued in this case to the State Governments of Punjab and Haryana, as also the Directors General of Police of both the States to ensure that video cameras are installed at the exit and entry points of all police stations in the two States, as also in the offices of the Central Intelligence Agency of each State, the Director General of Police, Haryana, had filed an affidavit thereafter, stating that the needful had been done in all but 3 police stations as were under construction.

The State of Punjab however had expressed its inability to do so immediately and had sought time till November 30, 2018 to complete the process, which time has now been extended in terms of an order passed in another petition, till January 01, 2019.

2. Coming back to the present case, the petitioner had also filed an affidavit stating that special instructions were given by the SSP, Nawanshahr, that no one would install cameras in the village. Consequently, the DGP had been directed to look into that allegation, as also the allegation of snatching by police personnel of cameras already installed in the village of the petitioner. Pursuant to that order the DGPs' affidavit had been filed, as also of the SSP, Nawanshahr, with the SSP naturally denying that he had issued any such instructions (that cameras would not be installed in the village of the petitioner), with him further stating that in fact he had instructed all SHOs in the District to motivate people and traders to install CCTV cameras in public places, in order to try and detect criminal activities of anti-social elements.

The DGPs' affidavit stated that an enquiry was conducted and it was found that no incident, as projected by the petitioner, of police removing CCTV cameras from his house, was found to have actually taken place, with the petitioner also being a person against whom previously also criminal proceedings had been initiated and therefore the possibility of him having removed the cameras himself or in collusion with somebody else, from his own house, also could not be ruled out, just so as to try and falsely implicate police officials.

3. Thus, as regards the issue of CCTV cameras having allegedly been removed by the police personnel from the petitioners' house, with no further evidence having been shown by this petitioner to substantiate that allegation, and with the affidavit of DGP himself having stated that an inquiry was conducted, with the allegation found to be false, nothing further need to be said by this court on that allegation, which remains wholly unsubstantiated.

4. As regards the petitioners' involvement in the crime (as per the police) that is immediately in issue by way of FIR no.7 dated 23.01.2018 having been registered, even mobile phone records had been called for by this court, of the police officials shown to be part of the party that had apprehended the contraband from a car stated to have been driven by the petitioner (with the petitioner allegedly having run away from the spot).

5. As recorded in previous orders passed, of the police party consisting of 8 persons as are shown to have apprehended the said car on January 23, 2018, it was found that the author of the FIR, ASI Jarnail Singh, was present at the spot, i.e. at village Aur, from 7.54 a.m. to 1.14 p.m., with the apprehension of the vehicle stated to have been at about 9:00 a.m. (The explanation for the officer remaining in the village till past 1.00 p.m., is, (as

per learned State counsel), that he was conducting follow up investigation.

It was also found that ASI Satnam Singh was present in the village between 8.37 a.m. to 9.58 a.m., (as per his mobile phone records).

The said ASI is stated to have thereafter tried to apprehend the petitioner who had run away from the spot (as per the case of the police), but not having been able to 'catch him', had come back to the village at 11.40 a.m. with eventually a *rukka* (written message) sent to the police station at about 2.00 p.m., through Head-Constable Jaswinder.

6. Mr. Kathuria, learned counsel for the petitioner, had also pointed out from the mobile phone records that some other personnel of the police party were either not found present at village Aur, or had left it well before even the message was sent to the police station for registration of the FIR.

7. Learned State counsel had explained that as regards one Head Constable Kulwinder Kumar, his mobile phone had been left by him at the office of the CIA staff at Nawanshahr, and as regards Head Constable Balwinder Singh, he was shown to be present at the spot between 8.57 a.m. to 12.02 p.m., after which is shown to be at different locations, thereafter having come back to village Aur at 5.22 p.m.

8. It is also necessary to refer to what had been submitted by Mr. Daldeep Singh, learned State counsel, as recorded in the order dated November 02, 2018 (though he had also submitted to similar effect on earlier dates). The relevant part of that order reads as follows:-

“Mr. Daldeep Singh, learned State counsel, again on instructions submits that some of the passports recovered show the particulars of the petitioners' wife, Jagir Kaur, to be actually the wife of Santokh Ram, with the passport of Santokh Ram showing a

photograph of a person who seems to be the same as the petitioner, even if it is compared with the previous passport of the petitioner in his own name, i.e. Ashok Kumar (both of which have been produced in Court today).

He further submits, on instructions, that no such person by the name of Santokh Ram son of Joginder Ram and Mohinder Kaur, exists in village Garopar, with the parentage of the petitioner, in his old passport, given to be as the son of Joginder Singh.

However, learned State counsel submits that no offence under any provision of the Passports Act or under Section 420 of the IPC etc. has been registered so far, because verification of the passport from the Regional Passport Officer has to be obtained.

Adjourned to 06.12.2018.”

9. Today, the affidavit of Shri Deepak Hilori, Senior Superintendent of Police, Nawanshahr, has been filed in court, stating therein that upon an investigation conducted, headed by the Superintendent of Police (Investigation), SBS Nagar, it was found that of the 6 passports recovered from the car driven by the petitioner on 23.01.2018, passport no.W045892 was issued on 22.10.1984, showing the name of the petitioner to be Ashok Kumar son of Joginder Singh, with his date of birth shown to be 18.12.1968, with that passport being valid till 21.10.1989 (thereafter renewed on 07.11.1989 and it having remained valid till 21.10.1994).

The photograph of the petitioner on the passport had been verified by the Numberdar, a member Panchayat and the Chowkidar of the village.

It was also found by the SIT that the petitioner had also forged (as contended) a ration card, showing himself to be Santokh Ram son of Joginder Ram, with his date of birth shown to be 11.06.1970 instead of 18.12.1968, with him thereafter having applied for a new passport, which was

issued to him, bearing no.A-2479333 on 21.03.1997, valid till 16.09.2007.

The said passport, as per the SSPs' affidavit, was admitted by the petitioner to be his own, with the photograph on the said passport also found to have been verified by the same Numberdar and another Panchayat member of the village. (It is necessary to notice here that though the incident is stated to have taken place at village Aur, it is stated to be a kind of 'twin village' of village Garopar, in which village the residence of the petitioner is stated to be shown in the passport. Both the villages are stated to be immediately opposite each other, with only a narrow road dividing them.)

The SIT was also stated to have found that in fact there was no person by the name of Santokh Ram son of Joginder Ram resident in the village, as disclosed by the Numberdar, member Panchayat and the Chowkidar.

It has also been further stated in the affidavit that even the petitioners' wife applied for a passport showing herself to be the wife of Santokh Ram (instead of Ashok Kumar).

Yet further, the affidavit states that police verification, as was necessary to be conducted before the issuance of the passport, was done by one Head Constable Hans Raj, allegedly in connivance with Numberdar Shingara Ram, but both the said persons are stated to have already died, with obviously therefore no proceedings possible to be initiated against them.

10. Having considered the entire matter, in my opinion, the petitioner does not deserve the concession of anticipatory bail being extended to him any further, with at least 3 of the police personnel of the police party that is said to have apprehended the car driven by the petitioner on 23.01.2018, having been found to be, even as per their mobile phone records, present in

the village in the morning hours, though of course there is a discrepancy with regard to their presence in the village thereafter, till the time the *rukka* (written message) is stated to have been sent to the police station for registration of the FIR.

To repeat, the explanation of learned State counsel (on instructions) has throughout been that some police personnel went in search of the petitioner after he absconded from the spot, with one of them at least having returned again to the spot, where ASI Jarnail Singh continued to remain.

11. Thus, even if the mobile phone records of one or two other police personnel do not tally with their alleged presence at the spot, the petitioner, in the entire circumstances, in my opinion cannot be extended the concession of anticipatory bail any further, especially looking at his dubious background as has been at least so far shown to this court, with him having, *prima facie* at least, obtained two passports in different names.

Though Mr. Kathuria, learned counsel for the petitioner submitted that the petitioner had changed his name, that contention seems to be wholly an after thought, with no notification/publication shown to this court with regard to any change of name and with, in any case, even the preliminary investigation carried out having shown that no such person by the name of Santokh Ram son of Joginder Ram actually living in the village, but the second passport having been shown to be issued in that name, with the photographs on both the passports (in the name of Ashok Kumar and Santokh Ram), even to this court appearing to be of the same person, though with slight ageing of the face seen in the second photograph.

12. Hence, in these set of circumstances, I see no reason to continue

with this petition with it consequently dismissed, and the interim order dated 16.02.2018 hereby vacated.

13. However, naturally, nothing stated hereinabove or in the previous orders passed in this petition, shall be taken to be an observation on the merits of the case, either for or against the petitioner, which would be subject matter of further investigation (and trial if it comes to that stage), wholly on the basis of evidence gathered/produced.

Therefore, all observations made by this court in the present petition, are to be taken to be only in the context of whether the petitioner deserves to be further granted the concession of anticipatory bail or not.

December 06, 2018

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**(AMOL RATTAN SINGH)
JUDGE**

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No