

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

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**CRR No. 4069 of 2017
Date of Decision: 17.02.2018**

MASTER HARPALSINGH@HAPPY

..... Petitioner

Versus

STATE OF PUNJAB AND ANR.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. Rahul Bhargava, Advocate for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab.

SUDIP AHLUWALIA, J. (ORAL)

This revision petition is directed against the order passed by Ld. Additional Sessions Judge, Amritsar dated 30.10.2017, vide a which the petitioner's application seeking discharge in Session case No.266 titled as “State vs. Harlaj Singh Etc.,” was dismissed after hearing.

2. Background of the matter is that FIR was lodged against several persons including present petitioner in which it was alleged that the complainant's uncle namely Gurdev Singh@Gora was shot at by two brothers namely Harlaj Singh@Tinku and Palraj Singh@Pintu, and that said Gurdev Singh subsequently succumbed to his injuries. Consequently the FIR was lodged under Sections 307, 302, 148, 149 of Indian Penal Code with Sections 25, 27, 54 and 59 of the Arms Act. The present petitioner

against whom, there is admittedly no allegation in the FIR of having actually indulged in any violent act was nevertheless, challaned while he was in judicial custody. In the relevant challan dated 03.10.2015, it was mentioned at the end of the said challan:-

“Enquiry in respect of aforesaid Harpal Singh, who has been arrested in the present case, is pending before Sh. Avtar Singh, D.S.P. Crime Range, Jalandhar. It has been written to his office and also to that of Hon'ble A.D.G.P. Director Bureau of Investigation, Punjab, Chandigarh for sending the enquiry report but till date enquiry report has not been received. By 7-10-15, 90 days would lapse from the date of arrest of Harpal Singh. Therefore, Challan (Supplementary) as per Section 173 Cr. P.C. against Harpal Singh son of Makhan Singh mentioned in column no.3 is being filed in the court for the purpose of trial by mentioning the names of witnesses in column no.6. On receiving the enquiry report, Challan Form as per Section 173 (8) Cr. P.C. shall be filed again in the court. After attaching the supplementary challan with the main challan, trial be held by summoning the witnesses mentioned in column no.6.”

(Emphasis added)

3. It therefore becomes clear that before being apprised about the enquiry report qua the inquiry being conducted by the D.S.P. Crime Range, Jalandhar, the initial challan was hurriedly sent up against the petitioner as otherwise he would have been released on statutory bail after having undergone detention for 90 days or above, and therefore option of subsequently sending up the supplementary challan on the basis of enquiry

report was also kept open.

4. Thereafter, the relevant enquiry report of the D.S.P. Crime Range, Jalandhar dated 16.06.2017 was also forwarded to the court, which is now on record as Annexure P-4. It was categorically mentioned therein:-

“ On the basis of statement of the complainant of the case and photocopy of the affidavit tendered by him, statements of the witnesses who were present at the spot, C.D.R. and C.C.T.V. Footage of Star-in-Bar, it has been found out that Master Harpal Singh son of Sh. Makhan Singh, resident of Link Road, Inder Colony, Verka, Amritsar is innocent in Case No. 207 dated 25.05.2015 u/s 307, 302, 148, 149, IPC, 25/27 Arms Act, Police Station, A Division, Amritsar.” (Emphasis added)

5. The grievance of the petitioner before this Court is that he ought to have been discharged by the trial Court in view of such enquiry report, since it was confirmed from scientific evidence that at the relevant time he was actually present at a different place being “ Star-in-Bar”. But the learned trial Court disregarded this report and rejected his prayer for discharge after observing inter alia:

“ In case, without giving opportunity to cross examine the Enquiry officer and to challenge the authenticity of CCTV Camera Footage, the same is accepted as it is, then it will amount to condemning the prosecution unheard, without affording any opportunity to cross examine the concerned Enquiry officer etc. and obtaining the certificate required U/s. 65 of Indian Evidence Act. Rather, accused can prove his plea

of alibi in his defence.”

6. It was therefore, clear from the above observations that view of the trial Court was that whereabouts of the petitioner at the relevant time as revealed from the supplementary enquiry report was in the nature of his *alibi*/defence in the trial, which can therefore, only be looked at the appropriate stage in trial.

7. The petitioner's side has relied upon the decision of the Supreme Court in a decision “ P. Vijayan vs. State of Kerala & Anr., 2010(2) SCC 398”, wherein, it was held inter alia:-

“If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground

would taken within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against them.” (Emphasis added)

8. The position in the present case is that the initial challan was sent up to preclude the petitioner from his release ostensibly by way of statutory bail, as otherwise the investigation in its full form was not yet completed and as such, the option was reserved to send up concluding result of investigation by way of supplementary challan.

9. The same was thereafter received in which the petitioner was entirely exonerated on the basis of specific material quoted in the report, and no independent implicating material apart from the bald allegations in the original FIR had been mentioned in the initial challan. In the circumstances, the supplementary enquiry report by all means, was only a continuation of the actual challan submitted against the petitioner after full fledged completion of the investigation and therefore, ought to have been considered on merits by the Ld. Trial Court now.

10. Furthermore, the statements of the complaint, wife and brother of deceased Gurdev Singh, in which they had specifically mentioned that the petitioner was actually not involved in the concerned occurrence, were also available before the Ld. trial Judge and which are on record as Annexure P-8 to P-10.

11. There can be no dispute that these statements which were sent up by the D.S.P. Crime Range, Jalandhar along with the enquiry report, the scope for which had already been retained in initial challan, were therefore,

part and parcel of the material gathered during the investigation and so ought to have been relied upon by Ld. Trial Court in considering the petitioner's application, as otherwise, no tangible material apart from the initial bald allegations in the FIR which were retracted by the complainant who also in his affidavit explains that the name of the petitioner was got inserted at the instance of some local level political leader, when the complainant and his family members were in a state of huge trauma and shock following the occurrence.

12. In view of the aforesaid circumstances, this Court is of the opinion that the Ld. Trial Court was not justified in rejecting the petitioner's prayer for discharge, since the grounds on which it was sought for, were all a part of the actual investigation report.

13. Consequently, the present revision petition succeeds. The impugned order is set aside and the petitioner is directed to be discharged from the pending Trial proceedings forth with.

17.02.2018
Jyoti-IV

(SUDIP AHLUWALIA)
JUDGE

Whether speaking/ reasoned : Yes/ No

Whether reportable : Yes/ No