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

CRM-M-25187 of 2016 (O&M)

Date of Decision: 02.04.2019

Manjit Gupta

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. D.S.Pheruman, Advocate, for the petitioner.
Mr. C.L.Pawar, Senior DAG, Punjab.
Mr. Amarpreet Singh, Advocate for
Mr. Binderjit Singh, Advocate, for respondent No. 3.
Mr. Sumeet Goel, Advocate and
Ms. Varsha Gupta, Advocate, for respondent No. 5.

MAHABIR SINGH SINDHU , J.(Oral)

Present petition has been filed under Section 482 Cr.P.C. seeking investigation of criminal case registered vide FIR No. 20 dated 12.03.2015 under Sections 21/22/25/61/85 of NDPS Act, at Police Station Mehna District Moga, by Central Bureau of Investigation and to register a criminal case against Assistant Sub Inspector Partap Singh-respondent No.4 while falsely implicating the petitioner in the present case and to award suitable compensation for keeping the petitioner in illegal custody.

As per prosecution case, PW2-ASI Partap Singh, along with other police officials had put a barricade (*naka*) on Moga-Ludhiana G.T. Road near the turn of Village Raulli in connection with suspected vehicle(s) on 12.03.2015, then at about 06.15 p.m. one Canter, Tata 407

registration No. PB-29-C-9077 came from Village Raulli side. Driver was signalled to stop the vehicle, but he tried to run away and was apprehended by ASI Partap Singh along with his companions and disclosed his name as Manjit Gupta son of Vijay Gupta (petitioner). Further alleged that efforts were made to join the independent witnesses but none agreed. PW2 disclosed his identity and apprised the petitioner about his legal right to be searched before the Magistrate or gazetted officer but he reposed full faith in him and duly signed the consent memo Ex.P1 in token thereof which was witnessed by HC Ashok Kumar-PW4 as well as HC Iqbal Singh. After conducting the search, recovery of 1400 bottles of Rexcof were effected from 12 boxes of cardboard loaded in the above Canter and out of which 12 bottles were taken as samples and the same were duly sealed with seal 'PS'. Specimen of the seal as well as Form No-29 were prepared separately and which were handed over to PW4. Petitioner could not produce any bill (s) or licence for keeping the above contraband in his possession and that resulted into the registration of above FIR.

It is contended on behalf of the petitioner that he has been falsely implicated in the present case inasmuch as neither the petitioner was present at the time of alleged recovery; nor any contraband has been recovered from him. Further contended that as a matter of fact, alleged recovery was effected from Driver of the Canter namely, Bhupinder Singh on 12.03.2015 at 10.30 a.m. by respondent No.3 and he demanded Rs.10 lacs from the petitioner but when his demand was not acceded to, then he implicated and arrested the petitioner. Further contended that an application dated 31.03.2015 (P-2) was also made in this regard by the wife of the petitioner to Senior Superintendent of Police Moga, and during

inquiry, consignees Navdeep Kumar and Ram Nath stated that they gave bribe to respondent No.3 for implicating the petitioner and a reference in this regard is made to their statements dated 07.11.2015 (P-3 and P-4).

On the other hand, learned State counsel has opposed the contentions raised on behalf of the petitioner while submitting that after registration of the case, the matter was handed over to Deputy Superintendent of Police (I), Moga, in view of the application submitted on behalf of the petitioner and after conducting a thorough inquiry, he submitted his report dated 22.05.2015 in which it was found that it was the petitioner who is the real culprit and the Driver Bhupinder Singh has no role at all. Also argued that all the material prosecution witnesses have already been examined and the trial is at the fag end, thus prayed for dismissal of the petition.

Learned counsel for respondent No.3 supported the submissions of the learned State counsel and further contended that petitioner is trying to create evidence by filing the present petition as he has the remedy to lead his evidence in defence, if any, during trial, but at this stage, petition is not maintainable under Section 482 Cr.P.C.

Heard both sides and perused the record.

So far as registration of FIR as well as recovery of contraband are concerned, the same have not been disputed by the petitioner. It is also the conceded position that petitioner is the owner of TATA 407 from which the recovery of contraband was effected on the fateful day. The case of the petitioner is that at the time of alleged recovery, petitioner was not present and it was Bhupinder Singh who was driving the vehicle in question and the alleged contraband was to be delivered to consignees Navdeep Kumar

and Ram Nath by him without the knowledge and consent of the petitioner. Admittedly, on the basis of complaint dated 31.03.2015 (P-2) submitted to SSP Moga, by the wife of the petitioner, an inquiry was conducted by DSP Gurmeet Singh and he submitted his report dated 22.05.2015. It transpires that on the basis of some another application made on behalf of the petitioner to SSP, Moga a subsequent report dated 23.12.2015 (R-1) was submitted by SP, Moga, and he also endorsed the conclusion drawn by DSP Gurmeet Singh which was finally accepted by SSP, Moga. In the above report, it was found that petitioner remained in constant touch with both the above consignees i.e. Navdeep Kumar and Ram Nath through their mobile phones and he himself was driving the Canter at the time of occurrence and Bhupinder Singh has nothing to do with the same. Relevant part of the inquiry reads as under:-

“There is no active role of driver Bhupinder Singh in this case whereas Manjit Kumar Gupta is found to be real culprit. Except this said property was to be delivered to Ram Nath owner of Tushar Medical Store Moga and Navdeep Kumar owner of Deep Firm as in this regard they remained in contact with Manjit Gupta and owner of mobile No. 99156-26186 namely, Ramesh Kumar son of Krishan Lal r/o 8486 Atwal Nagar Habowal Kalan Ludhiana who has handed over said property to Manjit Gupta also be named as accused in this case and enquiry be conducted from them. In case, it is accepted then investigating officer be directed to take further proceedings according to report.”

The allegations of demand of Rs.10 lacs by Inspector Deepak from the petitioner have been specifically denied by the State of Punjab in the affidavit dated 16.10.2016 and there is no material on record to substantiate the plea raised on behalf of the petitioner. The contention of

the petitioner regarding statements (P-3 and P-4) of consignees Navdeep Kumar and Ram Nath is also not acceptable in view of the two inquiry reports submitted by DSP as well as SP, Moga.

After investigation of the matter, report under Section 173 Cr.P.C. was submitted on 19.01.2016 before the Court of competent jurisdiction and on the basis thereof, charges were framed against the petitioner on 30.11.2016, to which he pleaded not guilty.

Record of the learned trial Court reveals that five material prosecution witnesses, including PW2 SI Partap Singh (investigating officer) as well as PW4 HC Ashok Kumar (attesting witness of the recovery memo) have already been examined and now, the only formal witnesses remain to be examined. Petitioner would be afforded opportunities to prove his innocence at two stages i.e. at the time of recording statement under Section 313 Cr.P.C. as well as to lead the defence evidence during trial.

In view of the facts and circumstances discussed hereinabove, no ground is made out to hand over the investigation of the FIR in question to the CBI while exercising powers under Section 482 Cr.P.C. Consequently, the petition is dismissed.

Needless to say that if any misc. application filed on behalf of the petitioner is pending before the learned trial Court, the same be considered and decided in accordance with law without being influenced by this order.

The dismissal of the petition may not be construed as an expression of opinion on the merits of the case pending before learned trial Court, against the petitioner.

Record of the learned trial Court be sent back, immediately.

[MAHABIR SINGH SINDHU]
JUDGE

2nd April, 2019
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Whether speaking/reasoned	Yes
Whether reportable?	Yes