

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

CRM-M No. 44010 of 2016 (O&M)

Date of decision : 30.01.2019

Abhishek Chetal

.....Petitioner

Versus

Central Bureau of Investigation and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Deepak Sabherwal, Advocate for the petitioner.

Mr. Sumeet Goel, Standing counsel for CBI.

Mr. Amit Mehta, Senior DAG, Punjab.

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DAYA CHAUDHARY, J.

Petitioner Abhishek Chetal has approached this Court by way of filing the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short - “Cr.P.C.”) for handing over the investigation in case FIR No. 18 dated 09.11.2016 under Sections 21, 25, 29/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - “NDPS Act”) registered at Police Station – State Special Operation Cell (SSOC), Distt. Amritsar (Annexure P-1) to some independent agency like the Central Bureau of Investigation (for short - “CBI”). A further prayer has also been made that the investigation conducted be monitored by this Court with the direction to the investigating agency to conclude the investigation at the earliest.

Briefly, the facts of the case as made out in the present petition are that the petitioner is a qualified civil engineer from Punjab Technical University, Jalandhar. He is having brilliant academic record and dealing with business of shawls. Not only the petitioner but his family members are also pursuing the business activities in different fields. He is also having business dealings with certain businessmen from Pakistan including M/s Mir Shawls, Lahore, represented by Zaheer Abbas. He has been in conversation with said person of Pakistan from time to time.

On 08.11.2016, the petitioner went to Amritsar City and was carrying stock of shawls. He was also having some cash amount with him. While on the way back, at about 09:20 p.m., at toll plaza Dhilwan, his vehicle was stopped by certain persons who were in civil clothes and he was also taken to Amritsar SSOC Police Station. He was threatened, forced and coerced to make self-incriminating disclosures. He was also compelled to handover the cash, which he was carrying. Beatings were also given to him. A cash of ₹39,73,000/- was shown to be recovered from him as 'drug money' and false recovery of 500 grams heroin was planted upon him. A number of representations were made by the father of the petitioner namely Baldev Krishan Chetal. As per case of the prosecution, he was found to be in possession of 500 grams of heroin and a sum of ₹39,73,000/- in cash as drug money. He was taken into custody. FIR, as detailed above, was registered against him.

Learned counsel for the petitioner submits that the alleged recovery at Daburji bypass was totally false and without having any truth.

The CCTV footage of toll plaza Dhilwan reflects that the petitioner along with his vehicle was hijacked by certain persons in civil clothes at 09:20 p.m., whereas the distance between Daburji bypass and Dhilwan is more than 30 kilometers. Learned counsel also submits that the presence of the petitioner along with his vehicle can be verified from the call details/tower location of mobile No. 9915309396 of the petitioner on the relevant date *i.e.* 08.11.2016 as well as the phone-call records/tower location of the concerned police officials of SSOC, whose numbers are reflected in the FIR. Learned counsel submits that the call details of the mobile of the petitioner as well as photographs of toll plaza of Dhilwan are also annexed with the petition.

Learned counsel for the petitioner further submits that vide order dated 25.08.2017, after recording contentions, a detailed direction was issued by this Court as certain documents including CCTV footage and call details were not taken into consideration by the Investigating Officer. The matter was referred to ADGP, Bureau of Investigation, Punjab with the direction to appoint a senior officer to look into the plea of the petitioner, collect all relevant evidence and to submit the report before this Court. The report was submitted in a sealed cover on 18.12.2017. The copy of the report was also provided to him as investigation was completed. Thereafter, the case was adjourned on various dates as CFSL report was not received. Subsequently, the CFSL report was produced before this Court. Challan was presented, but the plea of the petitioner regarding CCTV footage of toll plaza and tower location of the mobile of the petitioner and the police

officials was not considered before presentation of the challan. Accordingly, the matter was referred to ADGP, Bureau of Investigation, Punjab. The report was submitted by IGP (Crime-III), Punjab, which was placed on record. It was mentioned in the report that the CCTV footage had been sent to CFSL, Chandigarh to identify the identity of the officers. It is also mentioned in the report that two mobile phones along with SIM Nos. 8591382463 and 7007793650 were recovered from the petitioner during search and he was found in touch with certain infamous smugglers, whereas those numbers did not belong to the petitioner as there was no document/ID to show that said numbers belong to the petitioner. As per case of the petitioner mobile No. 9915309396 belongs to the petitioner and he was in touch with his clients in Jammu & Kashmir region. The conversation between the two was of professional nature.

Learned counsel for the petitioner further submits that statement of certain persons were recorded under Section 161 Cr.P.C. just to create a false evidence against the petitioner, whereas the amount which was shown to have been recovered from the petitioner has never been denied by him. Learned counsel also submits that it has also wrongly been mentioned that the petitioner could not produce any document relating to business of shawls. The presence of the petitioner at the tool plaza and his interception by the police officials can be verified from the CCTV footage. Not only the tower location of mobile number of the petitioner but of the police officials as well who are reflected in CCTV coverage, can be compared as those are of the same place. Even the number of the car of the

petitioner is very clearly apparent in the CCTV footage.

At the end, learned counsel for the petitioner submits that the investigation of the case be handed over to any independent agency like CBI to be conducted by some senior rank officer of the CBI. In support of his contentions, he has relied upon judgment of Hon'ble the Apex Court in case ***Babu Bhai Jamna Das Patel Vs. State of Gujarat 2009 (9) SCC 610***.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner was in conscious possession of huge quantity of heroin and the amount of ₹39,73,000/- recovered from him pertains to drugs. A detailed investigation was conducted by senior officer under the direction of this Court and nothing was found that the allegations levelled against the petitioner are false. All documents including the CFSL report were also taken into consideration as per the direction issued by this Court. Even in the CCTV footage, neither the number of the car of the petitioner nor the faces of the police officials are visible clearly. The petitioner has no right to get the investigation conducted as per his choice. He has also relied upon judgment of Hon'ble the Apex Court in case ***Romila Thapar and others Vs. Union of India and others 2018 AIR (SC) 4683***.

At the end, learned State counsel submits that even challan has been presented and the petitioner is at liberty to avail the appropriate remedy available to him during the course of trial and the investigation cannot be handed over to any other agency keeping in view the stage of the trial.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents available on record including the affidavits filed by respondent-authorities on different occasions as well as the directions issued in the case on different dates.

Facts relating to lodging of FIR and presentation of challan are not disputed.

The grievance of the petitioner in the present petition from the very beginning is that the investigation of the case has not fairly been conducted and he has falsely been implicated in the case. Petitioner was intercepted by the police officials, who were in civil dress at toll plaza Dhilwan, while he was going in his car from Amritsar towards Jalandhar. It is also the case of the petitioner that entire proceedings of the police were captured in CCTV cameras of toll plaza, Dhilwan. The arrest of the petitioner has been shown on the next morning from Daburji bypass whereas the petitioner was stopped at toll palaza Dhilwan on 08.11.2016 at 09:20 p.m.

Admittedly, this petition was filed before presentation of the challan as has been admitted in the reply filed by respondent-State that the matter was under investigation and fair and impartial investigation was conducted. Even it was mentioned that the contacts of the petitioner of Kashmir were being traced, identified and efforts were being made to arrest him. However, the challan was presented within a week of filing of the reply without examining the CCTV footage of toll plaza at village Dhilwan. The matter was pending before this Court, but nothing has been brought to

the notice of this Court as to when the challan was presented. It seems to have been presented hurriedly within a very short period and that too without taking into consideration the CCTV footage of toll plaza and verification of tower location of the petitioner. Thereafter, the matter was referred to ADGP, Bureau of Investigation, Punjab with the direction to appoint a senior officer to look into the plea of the petitioner by collecting relevant evidence and to submit the report on or before 25.10.2017. Even the copy of the order was given *dasti* for conveying the same to ADGP, Bureau of Investigation. Meanwhile, the proceedings before the trial Court were ordered to be stayed. An affidavit of Director, Bureau of Investigation, Punjab was filed in the Court on 25.10.2017 stating that the inquiry was in progress and report would be filed on completion of the investigation within three weeks.

From the facts as mentioned above, it is clear that the CCTV footage, call details of the mobile of the petitioner and the police officials as well, have not been taken into consideration even during investigation conducted by an officer of senior rank, whereas a specific direction was issued by this Court to consider all these aspects.

Undisputedly, the investigation in a criminal offence must be free and fair and not with any ulterior motive. It is the duty of the investigating officer to conduct the investigation avoiding any sort of mischief or harassment to any of the accused. The investigating officer is supposed to be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must be above suspicion.

It is well settled that every accused is presumed to be innocent till he is proved guilty. However, the person alleged to be the accused is entitled for fair and impartial investigation. The prosecution is expected to play balanced role not only during investigation but during trial also. It has been held in various judgments of Hon'ble the Apex Court as well as this Court that investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. It is required to be in conformity with constitutional mandate as contained in Articles 20 and 21 of the Constitution of India.

It is not only the responsibility of the investigating agency but of the Courts as well to ensure that the investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. The investigation should not *prima facie* to be fair but impartial as well just to draw a balance between the citizen's right under Articles 19 and 21 of the Constitution of India. It has also been emphasized in various judgment of Hon'ble the Apex Court that where the Court comes to the conclusion that there was a serious irregularity in the investigation, the Court may direct further investigation under Section 173 (8) Cr.P.C. even by transferring the investigation to an independent agency, rather than directing reinvestigation. However, direction of reinvestigation is forbidden in law and the same can be done under very rare circumstances by recording reasons.

A criminal offence is against the Society at large and the responsibility is on the State being the guardian of human rights and

protector of law to discharge the sacrosanct role responsibility. The expression “fair and proper investigation” in criminal jurisprudence requires that investigation must be unbiased, honest, just and in accordance with law and secondly, to bring out the truth of the case before the Court of competent jurisdiction. The basic object of the investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty be punished. The victim cannot be afforded to be treated as a stranger to the criminal trial.

The following passage of Lord Danning scripted in ***Jones Vs. National Coal Board (1957) 2 All ER 155 (CA)*** is relevant in the present context:-

“...It’s all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth.”

In the present case, not only the mandatory provisions of the NDPS Act have been violated but even the directions issued by this Court to consider CCTV footage and tower location of mobile of petitioner-accused and police officials at the toll plaza have not been taken into consideration. The amount alleged to be recovered from the petitioner shown to be the drug money has been fairly admitted by the petitioner showing to be of dealing in business of selling shawls to various agencies. The investigating agency has recorded the statement of certain persons stated to have financial transaction with the petitioner while he was in police custody but those persons denied having any such transaction. From the very beginning, the

stand of the petitioner is that he was having cash amount with him but it cannot be said to be the drug money. However, the same has been considered as drug money by the police officials. Meaning thereby, for reaching to the truth the CCTV coverage at toll plaza village Dhilwan, which has been kept intact, is necessary to be verified. The call details of the mobile of the petitioner as well as of the police officials stated to be present at the place of occurrence are also necessary to be tallied. One more mobile number, which has specifically been denied, has been shown to be with the petitioner. There is no document to show that said SIM card belongs to the petitioner. It is required to be verified from the person who has issued that SIM card number. The CCTV coverage is clearly reflecting the number and make of the car but as per CFSL report number of the car has not been shown to be visible. The contradictions and variations, which are apparent, requires to be investigated further.

An application was moved by the petitioner before the Sessions Court, Amritsar for verifying the details of the mobiles of Amarjit Singh Bajwa, AIG, Counter Intelligence and other police officials (Nachatar Singh, Happy, Joshy *etc.*), who were part of the team as reflected in CCTV footage and apprehended the accused petitioner at toll plaza Dhilwan at 09:20 p.m. on 08.11.2016. It is also required to be verified as to whether those police officials were deputed at toll plaza or Daburji bypass or not. As per the case of the petitioner, the police officials were in Tavera vehicle which was parked close to the toll plaza of which the number is also with the petitioner which can be verified after recording his statement.

The NDPS Act provides stringent provisions for offences related to drug abuse and trafficking. The major offences under the NDPS Act are non-bailable. It has been observed that in a number of cases the drug offenders secure acquittal on technical grounds due to non-compliance of the mandatory provisions and the prescribed procedure as mentioned in the Act. The acquittal in serious offences particularly in NDPS cases creates a sense of insecurity in the society and undermine the faith of the common man in the administration of criminal justice. As such, it is incumbent upon the Investigating Agencies/ Prosecutors to discharge their assigned duties in a professional manner to achieve the desired objective of law.

To achieve the aforesaid purpose/object and to ensure conviction of offenders in NDPS cases, the enforcement agencies of the State are expected to work in close coordination and adhere to the provisions of the NDPS Act during investigation.

The object of mandatory provisions is to protect the accused from false implication in the case and the accused has a right to get his search conducted either before a Magistrate or a Gazetted Officer. A search before a Gazetted Officer or a Magistrate would impart much more authenticity and credit worthiness to the proceedings. Similarly, the provisions of Section 50 of the NDPS Act protect the personal liberty and freedom of an accused person. It fulfills the dual purpose and such search inspires confidence and evidence becomes more reliable and trustworthy. The provisions of Section 50 are mandatory in nature and not purely procedural but breach thereof vitiates the trial. After the arrest of a person

and before a search is conducted, it is mandatory on the part of the concerned police officer to inform the accused that he has a legal right to be searched before a Gazetted Officer or a Magistrate. The accused will be benefited in case there is a failure to comply with the mandatory provisions of the Act. Section 50 of the Act applies only in cases of search of a person. It does not extend to search of a vehicle or container or bag or premises. In case of personal search, notice is mandatory. In case of non-compliance of Section 50, a prejudice is going to be caused to the accused and such violation is serious. Sub-section(4) provides that where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman the search is required to be made by another woman by following decency. Accordingly, it can safely be said that compliance of Section 50 is mandatory.

Similarly, while making a search and seizure, independent witnesses should be associated and in absence of any public witness, the statement of police officials are required to be scrutinized with due care and caution. As per Section 51 of the NDPS Act, the provisions of Cr.P.C. are necessary to be applied in so far as they are not inconsistent with the provisions of this Act to all warrants issued and arrests, searches and seizures made under the NDPS Act. Provisions of Section 100 and 165 Cr.PC. are applicable. The provisions under Sections 100 and 165 Cr.PC. are procedural in nature and breach thereof does not render the evidence so collected as illegal or inadmissible at the trial but the evidence is required to

be examined by the Court with due care and caution.

For granting justice to the aggrieved person, the concept of a reasonable and fair trial is necessary. A number of cases fail on account of faulty investigation. Such like defective investigation starts right from the stage of filing/lodging of FIR, maintenance of case diary, search and seizure of articles/contraband and documents. It is the duty of the investigating agencies to investigate fairly and thoroughly and collect all evidence whether for or against the accused. The purpose is that innocent persons are not harassed and guilty are required to be punished. Moreover, in a case where harsh punishment is there, a duty is cast upon the prosecution to strictly follow the procedure and compliance of the safeguards. In case the search is not carried out strictly in accordance with the safeguards indicated or in violation of procedural prescription, such recovery suffers from illegality. It can safely be said that no reliance can be placed on the evidence when there is failure to comply with provisions relating to search and seizure as observed in various judgments. In some of the cases investigation was conducted by the police officer who made recovery, seized the contraband and arrested the accused and in such situation it was held invalid by the Courts. Investigation should be conducted by some other independent officer and it is the duty of the investigating officer to take all necessary precautions after sealing the article by handing over the seal to the independent witness so as to avoid any chance of tampering with the seal. In case of defective investigation, the only requirement is of extra caution to be given by the courts while evaluating the evidence. It has also

been held by Hon'ble the Apex Court in various judgments that accused cannot be acquitted only because of defective investigation and in such a situation, a pro-active approach is to be adopted to meet the ends of justice where the investigating officer has deliberately rendered the investigation defective. There are other major reasons also for acquittal in NDPS Act cases i.e. delay in trial as a number of cases are pending before the courts and long time gap between the occurrence of a crime and the trial normally casts doubts on the accuracy of the evidence. Sometimes, even the evidence becomes questionable which leads to acquittal on the ground of insufficient evidence. Due to long trial period in some of the cases the witnesses turn hostile.

There are other reasons also for failure of cases like that the person who recovers the contraband from the accused and lodges the FIR investigates the case. It has also been observed by the Courts that in some of the cases that weight balance is often taken from the open market either from some fruit vendor or shopkeeper but weighing of the contraband is not proved at the time of trial. In such a situation, the person from whom such weighing machine/balance was taken is invariably not examined as a witness. In case of huge recovered quantity which is stated to be seized and sealed on the spot by the I.O. but subsequently, during the course of trial, such recovery proves to be of lesser quantity and not in consonance with the seizure memo. Sometimes, by decreasing the total quantity it becomes from commercial to non-commercial which makes a lot of difference. Sometimes recovery and seizure from the accused is not proved because of

contradictions in the statements of witnesses, their hostility etc. during the course of the trial. It can also be an example of defective investigation which results into failure of justice as weight of samples taken and sent to FSL for chemical analysis are often disputed as bigger quantity of samples, taken by the I.O in the presence of a Magistrate and sent to FSL turns out to be of lesser quantity when weighed by the FSL expert thereby raising a suspicion. It has also been observed in various judgments that different packets/packs of contraband are recovered and seized but samples are taken from only few. In certain cases no entries are made in the Malkhana register about the seizures, samples taken for re-sealing etc. in order to prove the safe custody of the seized contraband. In some of the cases also the samples are sent late to the Forensic Labs and their retention under safe custody is not proved through the entries made in the Malkhana register during the course of trial. In absence of any satisfactory explanation for delay, it becomes a ground for acquittal. Impression seal affixed on the seized contraband/samples is usually kept in custody of some police official or Munshi of the concerned Police Station and not with an independent witness which creates suspicion and gives rise to the chances of tampering with the seal of the samples. Sometimes, re-sealing of samples is not proved as the Magistrate who conducts the re-sealing is neither examined nor cited as a witness. Sometimes, large numbers of samples are got re-sealed through the Magistrate but only few are sent to or received by the FSL.

It is expected that for compliance of the mandatory provisions and to investigate the case in a proper manner, the need of the hour is to

build a team of dedicated officers in the field of narcotics law enforcement who are well trained and equipped with updated knowledge and allied skills. To achieve the results, necessary training programmes need to be conducted at all levels in order to enhance the specialized skills, to improve performance and for effective enforcement to ensure better results to enhance quality in the investigation. A training is required relating to topics of drug law administration and enforcement including NDPS Act and Rules, financial investigation, money laundering, important case studies, important court judgments etc. It is necessary that a check list of all the steps to be taken on the spot and during the course of investigation including the recommendations should be kept ready with the specialized investigation kit and all the steps should be tick marked on completion by the I.O before finalization of the investigation. Such checklist, if used properly will minimise the scope of deviation from the prescribed procedure and will ensure quality investigation. Every type of information received regarding commission of offences under the NDPS Act, search & seizure conducted together with the grounds of belief explained under the proviso thereof, is necessary to be reduced into writing in the daily diaries of the police stations, which should be shared with the superior officers, at the earliest, preferably within a period of 72 hours, as required under section 42 of NDPS Act. In some of the cases, it is found that the samples are not sent well in time to the Forensic Science Laboratory for chemical examination and in some of the cases even the challans are presented without any such report. Such samples collected on the spot for scientific examination should

be sent at the earliest preferably within a period of 24 hours through a special messenger to the concerned laboratory and statement of special messenger deputed for said purpose should be recorded under Section 161 Cr.P.C. and be kept in CD file to maintain the chain of evidence.

The specialized investigation cell/team should be equipped with the specialized investigation kit, to be procured by the Govt./PHQ and be kept at the disposal of all the police districts by including the material relating to packaging of contrabands, sealing sticks, impression seal, weighing scale and preliminary test kits containing re-agents etc. These kits should mandatorily be carried by these teams to the spots, as and when information is received and put to maximum use as per requirements in a most professional manner.

A lot of time the witnesses and suspect allege foul play by the search team during the trial proceedings alleging that they were not present at the time of recovery. To avoid such a situation, all recovery and concealment methods should be videographed simultaneously if possible, recording the presence of the owner/occupant of the premises and the witnesses. This acts as a deterrent factor during trial proceedings.

In case ***Kashmeri Devi vs. Delhi Administration & Anr. 1988 (2) RCR (Criminal) 44***, the Hon'ble Apex Court has held that in a case where the police has not acted fairly and has shield the real culprits, it would be in the interest of justice to hand over the investigation to CBI or an independent agency for proper investigation of the case. In this case, Hon'ble the Apex Court has further held that order of investigation by CBI

can be passed even after filing of charge-sheet. Same view was taken by Hon'ble the Apex Court in case ***Punjab & Haryana High Court Bar Association, Chandigarh Vs. State of Punjab & Ors. 1994(1) R.C.R. (Criminal) 205***. Moreover, under Section 482 Cr.P.C. this Court has the inherent powers to make such orders as is necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The provisions of the Code do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

Similarly, Hon'ble the Apex Court in the case of ***Nirmal Singh Kahlon Vs. State of Punjab and others 2009 (1) RCR (Criminal) 3*** has held that the spirit of fair investigation and fair trial are concomitant to supervise the fundamental right of the accused under Article 21 of the Constitution of India. It is to be seen while ordering for further investigation as to whether the investigation has been conducted fairly and in an impartial manner. In case, the investigating agency is not fair and impartial then investigating agency cannot be permitted to continue as has been held in the case of ***Babubhai V. State of Gujarat and others 2010 (4) RCR (Criminal)***

311. Hon'ble the Apex Court in the case of ***Ram Lal Narang Vs. State (Delhi Administration)*** AIR 1979 SC 1791 has held that further investigation is not altogether ruled out merely because the cognizance of the case has been taken by the Court. Defective investigation coming to the light during the course of trial may be cured by further investigation in case the circumstances permit. It has further been held in said judgment that it is duty of the investigating agency to investigate and submit a report to the Magistrate and it is also open to the police to carry out further investigation.

Moreover, the further investigation is also necessary for principles of natural justice, which requires that accused be given an opportunity of hearing inasmuch as there was a judicial determination in their favour. Privy Council in the case of ***King Emperor vs Khwaja Nazir Ahmad, Vol. LXXI Indian Appeals, 203*** has held as under:-

“Just as it is essential that every one accused of a crime should have fresh access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an

appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus.”

In the present case it appears that compliance of mandatory provisions of the NDPS Act have been violated and investigation of the case has not been done in the manner it requires as per provisions of the NDPS Act/Rules. The faulty investigation results into miscarriage of justice but sometime innocent persons are falsely implicated and even the actual accused are acquitted in failure of compliance of those mandatory provisions.

In the case in hand, the CCTV footage showing car number of the petitioner and the police officials in civil clothes at the toll plaza Dhilwan at 09:20 p.m. have not been taken into consideration in spite of the directions issued by this Court. It can be verified from the call details of mobile No.9915309396 with Idea Cellular Ltd. pertaining to relevant date *i.e.* 08.11.2016 as well as phone/call records of the concerned officials of the SSOC whose names are reflected in the FIR.

Keeping in view the facts and circumstances of the case and the law position as discussed above, the investigation of the case is transferred to the Central Bureau of Investigation. The Director, CBI is directed to depute a senior officer of the rank of Superintendent of Police, to conduct the investigation of the case and complete the same within a period of 8 weeks from the date of taking over the investigation, by considering all aspects from different angles as discussed above. If, for any sufficient reason, the CBI authorities are unable to conclude the investigation within

said period, they are at liberty to seek extension of time. However, expeditious investigation of the case is required keeping in view the nature of the offence and the allegations as made out in the petition as well as in the order. It is also directed that status report be placed on record on the expiry of period of 8 weeks while moving application for extension of time.

The trial Court at Amritsar is also directed to send the complete relevant record of the case to the Court of Special Judge, CBI (Punjab) at Mohali. The Senior Superintendent of Police, Amritsar and the SHO, Police Station – State Special Operation Cell (SSOC), Amritsar are directed to assist the CBI in conducting the investigation. The State of Punjab through its Chief Secretary and Home Secretary, are further directed to provide all necessary assistance to the CBI in this regard.

Registry of this Court is also directed to supply the complete copy of the paper-book including the reply and affidavits filed from time to time as well as the order passed by this Court to learned counsel for the CBI for further handing over the same to CBI.

Learned counsel for the petitioner, on instructions from the petitioner, undertakes to deposit an amount of ₹5,00,000/- before the Registry of this Court which shall be adjusted towards expenditure incurred during investigation. An application for release of the amount be moved on conclusion of the investigation.

30.01.2019

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No