

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

CRM-M-47466-2018 (O&M)

Date of decision : 09.12.2019

Baljeet Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. J.S. Bedi, Sr. Advocate with
Mr. Saurabh Arora, Advocate for the petitioner.

Mr. Surinder Pal Singh Tinna, Additional A.G. Punjab.

ANIL KSHETARPAL, J.

Through this petition filed under Section 482 Cr.P.C.,
petitioner-Baljeet Singh has prayed for as under:-

“It is, therefore, respectfully prayed that the instant petition may kindly be allowed and the FIR No. 211 dated 11.12.2013 under Sections 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 120-B of the Indian Penal Code, 1860, P.S.Kotwali Nabha, District Patiala may kindly be quashed.

It is further prayed that the concluding part of the judgment of conviction and sentence order dated 29.03.2017 passed by the Court of Ld. ASJ, Patiala (Annexure P-2) vide which directions were issued to the prosecution to file challan against the petitioner as soon as possible may kindly be ordered to be expunged / quashed.

It is further prayed that supplementary challan dated 11.8.2018 filed against the petitioner under Section 173 (8) Cr.P.C. in case FIR No. 211 dated 11.12.2013 under

Sections 27-A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and under Section 120-B of the Indian Penal Code, 1860, P.S. Kotwali Nabha, District Patiala, may kindly be quashed.”

Some facts are required to be noticed. As per the case of prosecution, five accused persons namely Kuldeep Singh @ Bhola, Kuldeep Singh @ Keepa, Amrik Singh son of Kala Singh, Bahadur Khan son of Jaimal, Paramjit Singh @ Pammi son of Narinder Singh, were sent to face trial under Sections 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) and Sections 120B and 201 of the Indian Penal Code. In nutshell, the case of the prosecution is that when SI Darbara Singh on 11.12.2013 was present alongwith other police official at the turning point of Jail Road, Nabha, information was received that the prisoners and Jail Authorities/Officials in Maximum Security Jail, Nabha, in connivance with each other, are indulging in sale of drugs by smuggling in the prison. It was further stated that the amount realized from the sale of the drugs is sent through special messengers out of the jail. On that day also, the amount is being sent by Kuldeep Singh alias Bhola-a Prisoner, realised by him from the sale of drugs through Paramjit Singh alias Pammi and if raid is conducted, then he can be nabbed. FIR was registered. SI Darbara Singh along with police officials reached at the gate of Security Jail Nabha. ASI Karam Singh and other police officials were joined in the police party. One person was seen coming from the gate of the Jail towards Nabha road and on being nabbed by the police, he disclosed his name as Paramjit Singh alias Pammi. On search, he was found in possession of ₹39,000/-. The aforesaid amount was

converted into parcel. It was sealed and taken into possession. Spot was inspected and site plan was prepared. Paramjit Singh alias Pammi, during interrogation, revealed that he received a telephonic call from Kuldeep Singh alias Bhola that he should start from Amloh at 2.30 PM to reach outside the Jail at 3'o clock and then call him telephonically or the Deputy Sahib will call for him and he should then enter the Jail. He came along with Chand Singh on a motor cycle to the place where Jail is located and received a telephonic call from Kuldeep Singh alias Bhola, who directed him to stand in front of the Jail and he will be called in. He reached at the gate of the Nabha Jail and handed over his mobile and cash to Chand Singh. Thereafter, he was called by the Gate Keeper and after being searched, he went near the gate. On being asked by an official, he told that he is to meet Kuldeep Singh alias Bhola. The official who was sitting by the side of the said official remarked that he has been called in the office by the Deputy Sahib. He entered the office and saw that a bald officer was sitting alongwith Kuldeep Singh alias Bhola. He gave him a sum of ₹39,000/- for handing it over at the house of Kuldep Singh alias Bhola-a prisoner. Thereafter he came back without being checked, however, some sort of signatures were appended on his hand. Then, he has been apprehended. On conclusion of the investigation, five accused persons named above were sent to the Court for facing prosecution. At that time, the police reserved its right to file supplementary challan against petitioner-Baljeet Singh.

On conclusion of the trial, learned Additional Sessions Judge, convicted Kuldeep Singh @ Bhola and Paramjit Singh @ Pammi under Sections 29 and 27A of the Act of 1985 alongwith Section 201 of IPC and

sentenced them as under:-

“Kuldeep Singh @ Bhola

<i>Under Section</i>	<i>Sentence</i>	<i>RI Fine</i>	<i>In default RI</i>
<i>29 of NDPS Act</i>	<i>10 years</i>	<i>1,00,000/-</i>	<i>1 year</i>
<i>27A of NDPS Act</i>	<i>10 years</i>	<i>1,00,000/-</i>	<i>1 year</i>
<i>201 IPC</i>	<i>3 years</i>	<i>10,000/-</i>	<i>1 month</i>

Paramjit Singh alias Pammi:-

<i>Under Section</i>	<i>Sentence</i>	<i>RI Fine</i>	<i>In default RI</i>
<i>29 of NDPS Act</i>	<i>10 years</i>	<i>1,00,000/-</i>	<i>1 year</i>
<i>27A of NDPS Act</i>	<i>10 years</i>	<i>1,00,000/-</i>	<i>1 year</i>
<i>201 IPC</i>	<i>3 years</i>	<i>10,000/-</i>	<i>1 month</i>

The aforesaid two convicts filed two separate appeals bearing CRA-S-1849-SB-2017 and CRA-S-1919-SB-2017, before this Court which have been allowed vide judgment dated 12.09.2018.

Learned Additional Sessions Judge, Patiala while passing the judgment of conviction also directed police i.e. the Investigating Agency to file challan against Baljeet Singh, the petitioner. During the pendency of the appeal filed by the convicts named above, following orders were passed by the High Court:-

“Order dated 08.05.2018:-

The SSP, Patiala, is directed to file an affidavit with regard to the findings against Sh. Baljeet Singh, former Deputy Superintendent, central Jail, Nabha, pursuant to the directions issued by the learned trial Court in the case, vide the impugned judgment.

Adjourned to 09.08.2018

A copy of this order be given to learned State counsel under the signatures or the Bench Secretary.”

“Order dated 09.08.2018:-

Short reply dated 03.08.2018, has been filed on behalf of the State in Court today and the same is taken on record. A copy thereof has been supplied to learned counsel for the applicant/ appellant.

Custody certificate dated 09.08.2018, prepared by Sh. Gurcharan Singh Dhaliwal, Deputy Superintendent, Central Jail, Patiala, has also been filed in Court today and the same is also taken on record.

After hearing learned counsel for the parties, I am prime facie convinced that directions given by the learned trial Court in its judgment dated 29.03.2017, regarding the filing of challan against Baljeet Singh, the then Deputy Superintendent of Police, has not been complied with, till date.

Let notice be issued to the Senior Superintendent of Police, Patiala, to show cause why proceedings under the Contempt of Court Act, 1971 be not initiated against him.

Adjourned to 20.08.2018.

It is made clear that the main appeal will be heard on the date fixed.”

The petitioner has averred that forced by the directions issued, the police presented/submitted a report (challan) to the Court against the petitioner. Hence, the petitioner filed the petition. When the petition came up for preliminary hearing on 26.10.2018, while issuing notice by a detailed order, further proceedings against the petitioner were directed to be stayed.

Reply to the petition has been filed in which it has been stated that pursuant to the directions of the Court from time to time, final report/challan has been submitted/filed in the Court.

Learned Senior counsel appearing for the petitioner has made

following submissions:-

- 1) No direction could be issued by the Court to present challan/file police report as required under Section 173 Cr.P.C..
- 2) Once all the other co-accused have been acquitted, in view of judgment passed by Division Bench of this Court in the case of ***Sudo Mandal @ Diwarak Mandal Vs. State of Punjab, 2011(2) RCR (Criminal) 453***, the proceedings against the petitioner are also required to be quashed.
- 3) In the present case, there was no recovery of narcotics. Without recovery of the narcotics or psychotropic substances, offence under Sections 27A and 29 of the Act of 1985 is not made out.
- 4) The learned Special Court had no jurisdiction to issue direction. The Special Court, if considered it appropriate and was satisfied on examination of the material available, could only summoned the petitioner under Section 319 Cr.P.C.

On the other hand, learned counsel for the State, while opposing the petition, has submitted that the judgment in the case of Sudo Mandal (Supra), would not help the petitioner in the present case. He further submitted that this Court should not exercise its powers under Section 482 Cr.P.C. in such a case involving offence of serious nature.

This Court has considered the arguments of learned counsel for the parties and with their able assistance gone through the paper book.

As regards first argument of learned counsel that the Court had no jurisdiction to issue direction to the police to submit challan against a particular accused, is no doubt not permissible. The Hon'ble Supreme Court

in the judgment passed in the case of **Abhinandan Jha and others Vs. Dinesh Mishra, AIR 1968 Supreme Court 117**, has held that such direction cannot be issued. This Court has also followed the judgment passed by Hon'ble the Supreme Court while deciding the case of **Sohan Lal and another Vs. State of Punjab and another, 2019(3) RCR (Criminal) 532**.

Still further, Sections 27A and 29 of the Act of 1985 provide for punishment for financing illicit traffic and harbouring offenders. Section 29 of the Act of 1985 deals with punishment of abetment and criminal conspiracy. In the present case, there is/was no recovery of any narcotic drug or psychotropic substance prohibited under the Act. All the accused stands acquitted either by the Additional Sessions Judge or by this Court. There are no offenders and, therefore, there cannot be any financing of any illicit traffic or abetment or criminal conspiracy. The conspiracy can be with another person. At present, in absence of other accused, there cannot be any conspiracy.

The High Court while dealing with the appeals of Kuldeep Singh @ Bhola and Paramjit Singh @ Pammi has also found that offence under Sections 27A and 29 of the Act of 1985 are not made out because before convicting a person for financing of illicit traffic, it is necessary to prove illicit traffic. "Illicit traffic" has been defined in Section 2(viii) (b) of the Act of 1985 to mean sale, purchase and dealing in any activity of narcotic drug or psychotropic substances. Similarly, conviction for abetment and criminal conspiracy under Section 29 of the Act of 1985, it is essential to establish the commission or conspiracy to commit any offence punishable under Chapter IV of the Act. On the same reasoning, offences against the

petitioner are also not made out.

There is again force in the last submission of learned Senior Counsel that Special Court had no jurisdiction to direct the police to present challan. The Court could exercise its powers under Section 319 Cr.P.C. or any other provision to summon the additional accused and prosecution and make him face.

It may be noted here that State while filing the reply has not asserted or disclosed that the prosecuting agency has collected any material against the petitioner. In the reply it has been stated that police report has been filed under Section 173(8) of the Code of Criminal Procedure pursuant to the direction of the Court.

In view of the aforesaid discussion, this Court finds no requirement to deal with the other contention of learned Senior Counsel based on the judgment of the Division Bench in the case of Sudo Mandal @ Diwarak Mandal (Supra).

In view of the aforesaid discussion, this Court is of the considered view that allowing trial of the case which is having 'fait accompli' in view of the judgment passed by this Court in criminal appeals, would not be appropriate.

Hence, the present petition is allowed.

09.12.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No