

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

Date of Decision:- 15.10.2020

Crl. Misc.No.M-19523 of 2020 (O&M)

Prem Singh Bist and another

....Petitioners

vs.

Union Territory, Chandigarh and others

....Respondents

Crl. Misc.No.M-30386 of 2020 (O&M)

Samdarsh Kumar alias Joseph

....Petitioner

vs.

Union Territory, Chandigarh

....Respondent

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Sanjiv Gupta, Advocate,
for the petitioners in both cases.

Mr.Ashu Mohan Punchhi, PP with
Mr. Anupam Bansal, Advocate,
for U.T., Chandigarh.

Ms. Manju Goel, Advocate for
Mr. Sumeet Goel, Advocate,
for respondent No.2 in Crl.Misc.No.M-19523 of 2020.

Sudhir Mittal, J.

Human ingenuity is boundless. Criminal minds are proverbially
fertile. If this ability were to be directed towards lawful pursuits, the society

would be immensely benefited. Unfortunately, it rarely happens.

2. This common judgement shall dispose off Crl.Misc.No.M-19523 of 2020 **Prem Singh Bist** vs. **U.T. Chandigarh and others** as well as Crl.Misc.No.M-30386 of 2020 **Samdarsh Kumar** vs. **Union territory Chandigarh and others** as both cases arise out of a common incident. Crl.Misc.No.M-19523 of 2020 seeks the relief of a direction to transfer the investigation of FIR No. 201 dated 19.06.2020 registered at Police Station Sector 39, Chandigarh, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and Section 25 of the Arms Act, 1959 as well as Section 188 of the Indian Penal Code to the Central Bureau of Investigation and Crl. Misc.No.M-30386 of 2020 seeks the relief of bail pending trial for the petitioner in the aforementioned FIR.

3. FIR No. 298 dated 17.09.2017 came to be registered at Police Station, Sector 31, Chandigarh, under Sections 147, 148, 149, 307 and 506 IPC as well as Section 25 of the Arms Act, 1959 against nine persons. Three of them were employees of Prem Singh Bist (Petitioner No. 1 in CRM-M-19523 of 2020). Said Prem Singh Bist is a property dealer having an office at Deep Complex, Hallo Majra, Chandigarh. One of these employees is Samdarsh Kumar alias Joseph (Petitioner No. 2 in CRM-M-19523 of 2020). Prem Singh Bist gave a complaint dated 23.10.2017 in the office of the Central Bureau of Investigation (hereinafter referred to as 'CBI') alleging that a police team of 5-6 people came to his office after the registration of the aforementioned FIR to nab his three employees who were allegedly accused therein. Before that, Sub-Inspector Mohan Singh had met him in the market at Ram Darbar, Chandigarh and demanded a bribe of ₹ 9 lakhs.

The bribe was for the purpose of helping the employees of the complainant and was demanded on behalf of Smt. Jaswinder Kaur, Station House Officer (hereinafter referred to as 'SHO') Police Station, Sector 31, Chandigarh as well as himself. ₹ 8 lakhs were to be paid to Smt. Jaswinder Kaur whereas ₹ 1 lakh was to be kept by Sh. Mohan Singh. The complainant was also taken to Car Bazar Ground, Ram Darbar, Chandigarh where he met Smt. Jaswinder Kaur and she directed him to comply with the demand of Sh. Mohan Singh or else his employees would be charge-sheeted. It was further stated that Sh. Mohan Singh has called the complainant at about 11:30 AM on 23.10.2017 with the bribe amount. Accordingly, the CBI laid a trap. A recording was made of the conversation between the complainant and Sh. Mohan Singh and an FIR dated 24.10.2017 was registered under Section 7 of the Prevention of Corruption Act, 1977 (hereinafter referred to as the 'PC Act') against Sh. Mohan Singh.

4. During the course of the trial in the CBI Court, an application under Section 319 Cr.P.C. was moved for summoning Smt. Jaswinder Kaur as additional accused. The said application was allowed vide order dated 13.02.2020. On the same day, an application was moved alleging that the Chandigarh Police was harassing the complainant and forcing him to withdraw his application for summoning Smt. Jaswinder Kaur as an additional accused. The CBI Court directed the Senior Superintendent of Police, Union Territory, Chandigarh to look into the complaint. Thereafter, FIR No.201 dated 19.06.2020 was registered at Police Station, Sector 39, Chandigarh under Section 22 of the NDPS Act, 1985, Section 25 of the Arms Act, 1959 and Section 188 IPC against Samdarsh Kumar. On 26.06.2020 the complainant filed another application in the CBI Court with

the allegations that Samdarsh Kumar had been falsely implicated in FIR No. 201 dated 19.06.2020. The false implication is on account of the pending case in the CBI Court against police personnel. It is also because of the refusal of the complainant to withdraw his application under Section 319 Cr.P.C.

5. Details mentioned in the application are that one Sh. Baldev Singh, SHO Police Station Sector 34, Chandigarh, was looking for Samdarsh Kumar at his house on 17.06.2020. He was not found but three other persons were present in his house. Sh. Baldev Singh directed one of them to call Samdarsh Kumar on phone. He informed the caller that he was in Zirakpur. Thereafter, Sh. Baldev Singh made those three persons sit in his vehicle but they were dropped after a short while. He went looking for Samdarsh Kumar but did not find him. Next day i.e. 18.06.2020, Sh. Rajdeep Singh, SHO, Police Station, Sector 31, Chandigarh, called Samdarsh Kumar on phone and asked him to meet him personally. Accordingly, Samdarsh Kumar went to meet him sometime between 4.00 PM and 7.30 P.M. He was informed that the police was likely to involve him in false cases and that Sh. Rajdeep Singh wanted to help him. Accordingly, he fixed a meeting with Sh. Amanjot Singh, SHO, Police Station, Sector 39, Chandigarh, outside Sham Fashion Mall, Sector 34, Chandigarh. Samdarsh Kumar called two of his friends to Police Station Sector 31, Chandigarh, so that they may take him to Sham Fashion Mall. Outside Sham Fashion Mall, he met two police personnel who took him to Ram Darbar. On the way, Samdarsh Kumar called two other friends to meet him at Ram Darbar. At Ram Darbar, said friends met Samdarsh Kumar and the police party and they were taken to Police Station Sector 34, Chandigarh, where Samdarsh Kumar

was tortured for about 45 minutes. Thereafter, all of them were taken to Police Station, Sector 39, Chandigarh where they were detained for the night. The application was accompanied by a pen-drive allegedly containing an audio recording dated 13.02.2020 wherein police personnel are heard threatening the complainant to withdraw his application under Section 319 Cr.P.C. It also contained CCTV footage from outside the house of Samdarsh Kumar dated 17.06.2020. Affidavits of some of the people who were present with Samdarsh Kumar between 17.06.2020 and 19.06.2020 were also filed. Prominently, these are affidavits dated 25.06.2020 of one Vinod alias Monty and Vinod alias Retta. Thus, it was prayed that necessary directions be given to the Chandigarh Police to preserve the relevant CCTV footage of the three police stations, take possession of the call detail records of the accused SHOs and other police personnel named in the complaint and conduct an enquiry so that innocent persons are not harassed and the guilty police personnel are punished. The learned Special Judge CBI Court Chandigarh directed the Senior Superintendent of Police Chandigarh to take necessary action upon the complaint in accordance with law. This direction was given vide order dated 29.06.2020 and the complaint along with the affidavits and pen-drive were forwarded to the Senior Superintendent of Police Chandigarh.

6. Accordingly, Senior Superintendent of Police, Operations & City, Chandigarh Police Headquarters Sh. Vineet Kumar was deputed to conduct an enquiry. He conducted a fact-finding enquiry and recorded the statements of the complainant and his friends who were allegedly present with Samdarsh Kumar when he was being taken from one police station to another as well as the accused police personnel. He also collected other

material evidence such as CCTV footage and call detail records. Meanwhile, Crl.Misc.No.M-19523 of 2020 (present petition for transfer) was filed and vide order dated 20.07.2020, this Court directed Union Territory Chandigarh to file its response by way of an affidavit of the Director General of Police. Thus, the Director General of Police directed D.I.G., UT, Chandigarh, to constitute a Special Investigating Team (SIT) vide order dated 23.07.2020. Consequently, a three-member SIT was constituted with Sh. Vineet Kumar as the Chairman. The SIT has finalized its enquiry vide report dated 7.08.2020.

7. Reply/affidavit dated 08.08.2020 of Sh.Vineet Kumar, Superintendent of Police, Operations & City, as well as affidavit dated 08.08.2020 of Sh. Sanjay Beniwal, Director-General of Police have been placed on record. Relevant extract of the reply/affidavit of the Director General of Police is reproduced below:-

“1 & 2 xxxx xxxx xxxx

3. That pursuant to the aforesaid order, the Senior Superintendent of Police, UT, Chandigarh referred the matter to Sh. Vineet Kumar, IPS, Superintendent of Police/Operations & City, Chandigarh to conduct an enquiry in respect of the allegations mentioned in the application of Petitioner No.1 before the learned CBI Court as reiterated before this Hon'ble Court in the instant petition. Having been appointed as an Inquiry Officer on 03.07.2020, Sh. Vineet Kumar, IPS, Superintendent of Police/Operations & City, Chandigarh proceeded to conduct an enquiry. The Inquiry Officer recorded statement of 11 concerned persons and also collected all

material evidence in the form of relevant CCTV footage and call detail records (CDR) of the aforesaid persons in relation to mobile numbers provided by the petitioners as mentioned by them in their complaint/application and the instant petition. A pen-drive furnished by the Petitioners to the Ld. CBI Court which was forwarded to the office of Senior Superintendent of Police, UT, Chandigarh and which was further handed over to the Inquiry Officer who also examined the same in detail.

4. That since the evidence collected was voluminous and technical, in order to ensure a fair and proper investigation it was considered just and appropriate and expedient under the circumstances to constitute a Special Investigation Team (SIT) to analyse and assess the evidence which had been collected by the Inquiry Officer. Consequently, the Deputy Inspector General of Police, UT, Chandigarh vide order # 3608-13/UT/HAC dated 23.07.2020 constituted the SIT comprising of the following members:

1. Sh. Vineet Kumar, IPS (SP/Operation & City)
2. Ms. Neha Yadav, IPS (ASP/South)
3. Sh. Rajiv Ambasta, DAN IPS (DSP/Crime)”

8. Rejoinder has been filed to the affidavit of the Director General of Police but there is no counter to the affidavit filed by Sh. Vineet Kumar Superintendent of Police. In the affidavit of Sh. Vineet Kumar, details of the criminal antecedents of the petitioners have been given. Against petitioner No. 1, eleven criminal cases have been registered in the past, out of which he was convicted in seven cases. These cases pertain to the year 2005 onwards, the last one being of the year 2016. The offences range from

theft, receiving stolen property, assault while committing theft, cheating, forgery and extortion. Against petitioner No. 2, seven criminal cases are reflected, two of which are FIR No.298 dated 17.09.2017, where-after the entire controversy has erupted and FIR No. 201 dated 19.06.2020 (subject-matter of the present petition). One conviction has been accorded and the offences range from assault, intimidation, attempt to commit murder, cheating, forgery and dealing in narcotic substances. These cases were registered at various police stations in Chandigarh including those involved in the present controversy. Since the details of the criminal cases mentioned in the affidavit and their outcome have not been denied, they would be deemed to be admitted. In the rejoinder to the affidavit filed by the Director General of Police, all that has been stated is that the SIT as well as Sh. Vineet Kumar have conducted an enquiry with a view to favour the police. The evidence referred to in the petition clearly establishes that Samdarsh Kumar- petitioner No. 2 has been falsely implicated.

9. Learned counsel for the petitioner has argued that the facts narrated here-in-above clearly show that Samdarsh Kumar has been falsely implicated in FIR No. 201 dated 19.06.2020. This is because the complainant refused to withdraw his application under Section 319 Cr.P.C. for summoning Smt. Jaswinder Kaur as an additional accused in the case registered by the CBI under Section 7 of the PC Act. The events show that Samdarsh Kumar was picked up by the police on 18.06.2020 and tortured at Police Station, Sector 34, Chandigarh. Thereafter, he was kept overnight at Police Station, Sector 39 Chandigarh, and in the early morning on 19.06.2020 drugs and ammunition was planted upon him. The allegations stand corroborated by the affidavits filed along with the application

presented before the CBI Court especially, affidavit dated 25.06.2020 of Vinod @ Monty and Vinod @ Retta. The pen-drive submitted along with the application shows that before passing of order dated 13.02.2020 summoning Smt. Jaswinder Kaur as additional accused in the PC Act case, the complainant had been threatened by the police personnel to withdraw the said application. The CCTV footage from outside the house of Samdarsh Kumar establishes the presence of the police on 17.06.2020. There was no occasion for the police to visit the house of Samdarsh Kumar on 17.06.2020 and, thus, it is evident that the police was harassing Samdarsh Kumar so that he and the complainant would turn hostile in the case pending before the CBI Court. Refusal to toe their line, has resulted in false implication of Samdarsh Kumar in FIR No. 201 dated 19.06.2020. Since a false case has been foisted upon Samdarsh Kumar, the police cannot be expected to conduct a fair investigation and, thus, the situation demands that investigation of the said FIR be transferred to the CBI. Further, Samdarsh Kumar may be released on regular bail.

10. The petitions are opposed by the learned Public Prosecutor representing by U.T., Chandigarh. He submits that a false narrative has been created by the petitioners. The affidavits of Vinod @ Monty and Vinod @ Retta if read conjointly demolish the case of the petitioners. Had there been any truth in the story put forth by the petitioners, both affidavits would have been identical but that is not the case. Material particulars are absent from the affidavit of Vinod @ Retta. Further, a detailed enquiry has been conducted upon directions issued by the CBI Court as well as this Court and the affidavits of the Chairman of the SIT as well as DGP Chandigarh are on record swearing that the complainant, his witnesses and the police

personnel named by him in the complaint have been examined and their statements have been recorded. The material relied upon by the complainant in the form of pen-drive has also been examined. In addition, call detail records of the concerned people have been obtained apart from the relevant CCTV footage of the concerned police stations. Voluminous evidence has been examined and the unanimous opinion of the SIT is that the allegations are false. It is further argued that after being arrested on 19.06.2020, Samdarsh Kumar was produced before the Duty Magistrate. Had there been any truth in the allegations being made now, he would have raised those issues before the Duty Magistrate. No such issue having been raised, the allegations are proved to be false. Thus, there is no ground for transferring the investigation to the CBI.

11. There can be no dispute that one of the rights guaranteed under Article 21 of the Constitution of India is the right to a fair investigation. If an investigation is biased, it would not result in a fair trial. Thus, if the registration of an FIR is malicious and an accused has been falsely implicated, there can be no question of fair investigation. Conviction would be a foregone conclusion unless the accused can produce sufficient evidence in their defence to discredit the prosecution.

12. It can also not be disputed that Constitutional Courts have the power to direct transfer of investigation. This power is to be exercised so as to instill faith in the investigation and to build up public confidence. Where it is alleged that a State Investigating Agency is acting under pressure of vested elements, investigation can always be transferred to the CBI which is an organization established under the Delhi Police Establishment Act and is free from local influences. However, no hard and fast rule has been laid

down or can be laid down for transfer of investigation to the CBI. Each case has to be decided on its own facts and circumstances.

13. Therefore, the question is whether in the facts and circumstances of this case, investigation of FIR No. 201 dated 19.06.2020 registered at Police Station, Sector 39, Chandigarh, under Section 22 of the NDPS Act, Section 25 of the Arms Act 1959 and Section 188 IPC deserves to be transferred to the CBI?

14. From the facts brought on record, it is evident that according to the petitioners the SHOs of Police Stations, Sector 31, Sector 34 and Sector 39 conspired to falsely implicate Samdarsh Kumar-petitioner No. 2 in a case under the NDPS Act. This was done because the petitioners refused to withdraw the application filed under Section 319 Cr.P.C. for summoning Smt. Jaswinder Kaur (erstwhile SHO of Police Station, Sector 31, Chandigarh) as an additional accused. Even their efforts to terrorize the petitioners so that they would turn hostile in the pending case in the CBI Court, failed. The first threat was allegedly made on or about 13.02.2020 which has allegedly been recorded in the pen-drive submitted along with the application dated 26.06.2020 filed before the CBI Court. Thus, according to the petitioners, the entire conspiracy centres around Smt. Jaswinder Kaur being summoned as an additional accused. It may be noted that the said person was the SHO, Police Station Sector 31, Chandigarh, at the time FIR No.298 dated 17.09.2017 was registered at Police Station, Sector 31, Chandigarh against nine persons including Samdarsh Kumar-petitioner No.2. The allegations appeared to be plausible as the petitioners mentioned a large number of details (as quoted here-in-above) in the petition and thus this Court thought it appropriate to seek a response. To ensure that a

response was not submitted in a cavalier manner, Director General of Police, U.T., Chandigarh was directed to file his personal affidavit. A conjoint perusal of the affidavit of the Director General of Police and Sh. Vineet Kumar, Superintendent of Police reveals that the matter was enquired into after taking into consideration and examination of all the material submitted by the petitioners along with their application dated 26.06.2020 filed before the CBI Court including the pen-drive which allegedly contained the audio recording of threat to withdraw the application filed under Section 319 Cr.P.C. Apart from this material, the Inquiry Officer recorded the statements of the concerned police officials as well as the witnesses cited by the petitioners. CCTV footage of the concerned police stations and relevant call detail records were obtained and examined. After conduct of this entire exercise, the unanimous opinion of the SIT is that the allegations are unfounded. The Director General of Police, U.T., Chandigarh has given his stamp of approval to the enquiry report. The highest officer of the Chandigarh Police has sworn-on-oath that there was no conspiracy and that the examination of the material relied upon by the petitioners and additional material collected shows that Samdarsh Kumar-petitioner No.2 has been lawfully accused of being in possession of narcotic substances. Under the circumstances, there is no escape from the conclusion that the petitioners have attempted to create a false narrative. This conclusion is corroborated by the fact that when Samdarsh Kumar-petitioner No. 2 was produced before the Duty Magistrate soon after his arrest on 19.06.2020, he did not complain of false implication. The criminal antecedents of Samdarsh Kumar give me strong reason to believe that had it been a case of false implication, he would have surely raised the issue before the Duty Magistrate.

15. It is settled law that the importance of a fair investigation and fair trial cannot be over emphasized. However, an investigation cannot be transferred to the CBI at the mere asking of an accused person. In **Mithilesh Kumar Singh** versus **State of Rajasthan**, 2015 (9) SCC 795, the Supreme Court has held that unless the Court is convinced and there is reasonable apprehension in its mind that justice is becoming a victim, a transfer will not be ordered. The observations of the Supreme Court are reproduced below:-

“XXX

XXX

XXX

9. Even so the availability of power and its exercise are distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demands such an order. No hard and fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court

may step in and exercise its extra ordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily much less falsely implicate anyone in the commission of the crime. That is particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are common place when State police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.”

16. Having gone through the entire record with a fine tooth-comb, this Court is satisfied that the allegations made in the petition are suspect. The petitions, thus, deserve to be dismissed. However, to ensure that the right of defence of Samdarsh Kumar is not prejudiced, I deem it appropriate to direct the Chandigarh Police to preserve the enquiry report and the

material based on which the same has been finalized. Specifically, the pen-drive submitted along with the application dated 26.06.2020 filed before the CBI Court, CCTV footage examined in the enquiry and the call detail records shall be preserved.

17. Regarding the prayer for bail pending trial, the same is rejected at this stage in view of the fact that the petitioner has been in custody only for 3 months and 19 days and there are a number of criminal cases pending against him.

18.

Both petitions stand dismissed.

October 15, 2020
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**