

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

CRM-M No.6711 of 2021 (O&M)

Date of decision: 16.09.2021

Sodhi Ram

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. H.S. Bhogal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Dheeraj Jain, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for grant of regular bail to the petitioner in FIR No.231 dated 21.12.2020 registered under Sections 22-B of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act') at Police Station Garhshankar, District Hoshiarpur.

Since the petitioner stands released on bail by the trial Court, this petition qua bail is rendered infructuous. However, considering the scope of directing the State of Punjab to provide correct Custody Certificate at par with State of Haryana, on 17.02.2021, counsel for the State has filed the Custody Certificate and submitted that the petitioner stands convicted in some other FIRs under the NDPS Act and sought some time to file the affidavit of the Investigating Officer. On next date, the Custody Certificate was filed, however, noticing the fact that the Custody Certificate did not disclose about the

pending cases/the cases in which the petitioner was convicted, it was directed that the Additional Director General of Police, Prisons, Punjab will file an affidavit as to why the involvement of the petitioner in the other previous cases under the NDPS Act is not reflected in the Custody Certificate and to suggest the measures for giving correct status of the accused persons in all the Custody Certificate of the State of Punjab.

Thereafter, on 19.03.2021, the following order was passed:-

“On 17.02.2021, the following order was passed:

“Learned State counsel has filed the custody certificate and submit that the petitioner stands convicted in some case under the NDPS Act and seeks some time to file the affidavit of the Investigating Officer.

Since in the custody certificate, the earlier conviction or involvement of accused has not been disclosed, the ADGP (Prisons) is directed to file an affidavit as to why the involvement of an accused in previous cases, where he stands convicted is not reflected in the custody certificate and to suggest the remedial measures which are going to be taken for showing the correct status of the accused person in all the custody certificates in the State of Punjab.

List again on 3.3.2021.”

Learned State counsel has filed reply by way of affidavit of Additional Director General of Police, Prisons, Punjab, wherein it has been stated that there are many entries of prisoners' FIRs which do not come in the notice of the jail administration as they are part of record of other departments of the criminal justice system like the Courts or Police. The final solution lies in interlinking of applications/database of all the agencies of the criminal

justice system, particularly the Courts, Police and Jails. It is further stated that this can be achieved once the Inter-operable Criminal Justice System (ICJS) is fully operational and the participating systems, viz. e-Courts CCTNS (the police application), e-Prosecution, etc. are synchronized. It is further stated that once read-only access to ICJS/CCTNS and e-Court is made available to Jail Department, the information of other cases of prisoners can be collected digitally and the chances of error shall reduce. It is further stated that the NIC is working towards this end and is also likely to make available facility of e-filing of custody certificates to the Hon'ble Courts very shortly.

In the affidavit, it is also stated that repeated requests have been by the office of the Director General of Police, Prisons, Punjab to National Informatics Centre (for short 'NIC') for providing read-only access of e-Courts and CCTNS application to Prisons Department, Punjab. It is further stated that the department has taken up the issue of activation of e-custody certificates module of e-Prisons on the pattern of Phoenix application of Haryana Prisons so that correct custody certificates having requisite information about all pending cases against a prisoner can be generated and submitted on time to the courts concerned. A reliance is placed on few letters issued in this regard to NIC to provide read-only access of e-Court and CCTNS application, however, till date, no action has been taken.

In view of the above, it would be appropriate to call an explanation from NIC for delaying the request of State of Punjab as hundreds of cases are listed every day before this Court wherein correct information cannot be supplied.

Accordingly, National Informatics Centre, A Block, CGO Complex, Lodhi Road, New Delhi through its

Director General is impleaded as respondent No. 2 to this petition.

The Registry is directed to make necessary corrections in the memo of parties and issue notice to newly added respondent No. 2 for the next date of hearing. Notice be sent through email as well.

It is made clear that if the explanation/reply is not filed on behalf of respondent No.2 - NIC on or before the next date of hearing, the Officer concerned shall remain present before this Court on the next date of hearing to attend the court proceedings and explain as to why the complete access of the aforesaid applications is not being provided to Prisons Department, Punjab.

In the meanwhile, let the affidavit of the Additional Director General of Police, Prisons, Punjab be filed on or before the next date of hearing regarding requirements of the Jail Department, Punjab to improve or update the e-Custody Module of e-Prisons.

List again on 26.04.2021.”

However on 09.09.2021, the reply on behalf of the National Informatics Centre, New Delhi for providing access of e-Courts and CCTNS application to Prisons Department, Punjab was taken on record.

Counsel for the State on the basis of the affidavit of the Additional Director General of Police, Prisons, Punjab has submitted that necessary action has been taken against the erring Assistant Superintendent (Warrant Officer), Central Jail, Kapurthala, who had committed gross negligence in submitting the Custody Certificate and therefore, charge-sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, has been issued to the concerned

official.

It is suggested in the affidavit of the Additional Director General of Police, Prisons, Punjab, that the final solution lies in interlinking of applications/database of all the agencies of the criminal justice system, particularly the Courts, Police and Jails and the same can be achieved once the Interoperable Criminal Justice System (ICJS) is fully operational and the participating systems like e-Courts, CCTNS (the police application), e-Prosecution etc. are synchronized. It is further stated that once read-only access to ICJS/CCTNS and e-Courts is made available to the Jail Department, the information of other cases of prisoners can be collected digitally and the chances of error will be reduced. It is also stated that the office of Additional Director General of Police, Prisons, Punjab is coordinating with NIC for provision of read-only access of e-Court and ICJS/CCTNS applications and the department has also taken up the issue of activation of e-Custody Certificate module of e-Prisons on the pattern of Phoenix application of Haryana Prisons, so that correct Custody Certificates giving complete information of pending cases against a convict or undertrial can be generated and submitted to the Courts and in this regard, a request is already made on 27.01.2021 to NIC. It is also stated that sometimes when an undertrial is admitted in jail and after sometime, he gets bail or gets an order of acquittal or undergone or order of undergoing sentence, the information regarding the acquittal is not made available to the Jail Authorities from the concerned Court and therefore, the same could not be recorded in the jail record.

In the reply filed by respondent No.2 – NIC, it is stated in

Para 4 to 11, as under:-

“4. That it is submitted that National Informatics Centre (hereinafter referred as NIC), as attached office of Ministry of Electronics and Information Technology, Government of India is closely associated with the Government in different aspects of governance by establishing a nationwide state-of-the-art ICT infrastructure and services for the Central Government, State Governments, UT Administrations, Districts and other Government organisations. It provides/offers a wide range of services, which includes multi gigabit nationwide network NICNET, NKN, National Data Centres, National Cloud, Pan India VC infrastructure, multi-layered GIS based platform, Domain Registration and Webcast. This plays a significant role in delivering citizen centric e-services across the government verticals of Judiciary, Legislative and Executive. In particular, NIC is a technical solution provider with specific role of software application development & maintenance and IT Infrastructure management for projects.

5. That it is pertinent to mention here that the ownership of data in a respective project is of the organization, with whom this subject matter pertains. For instance, in the case of e-Courts Project, the data ownership is with the respective State Government Prisons Department or the Ministry of Home Affairs, Government of India.

Therefore, the decision to share the data of a particular project with any other entity rests solely with that data owner and not with the NIC. NIC is implementing the technical feature based on the request of the data owner organization.

6. That in regard to providing read-only access of e-Courts to the Prisons Department, Punjab, it is submitted as follows:

i. That e-Courts Project is developed and maintained under the guidance of the E-Committee, Supreme Court of India. The ownership of data under the e-Courts Project is with the respective High Courts and the E-Committee, Supreme Court of India.

ii. That as per the instructions of the E-Committee, Supreme Court of India, necessary Application Programming Interfaces (APIs) are developed and

deployed to share the data under the e-Courts Project. Using these APIs, the data can be integrated with any other software application, like CCTNS, Prison Software Application etc.

iii. That the E-Committee, Supreme Court of India has formulated a policy for sharing data with the State Government Departments and Central Government Departments. The necessary documentation is share by the E-Committee with the respective High Courts, including the Punjab and Haryana High Court.

iv. That E-Committee in its meeting in July, 2020, it has been decided to share the data of e-Courts Project with other Government Departments electronically through Open API. Thus Government Departments who wish to use APIs can apply directly to the E-Committee, Supreme Court of India. Also, the State Government Department who wish to use APIs can apply with the respective High Court, who is the owner of the data (i.e. to the respective Central Project Coordinator of the High Courts). On the receipt of such application from the Department, the High Court recommends and forwards the application to the E-Committee for providing access to APIs. On the receipt of the request from the high Courts, the E-Committee, Supreme Court of India further provides access to APIs by generating key and providing key to the respective department with intimation to the High Court. The authority for providing access of data to the government department is with the E-Committee, Supreme Court of India.

v. That as per the information received from the E-Committee, the Central Project Coordinator, Punjab and Haryana High Court, sent a request to the E-Committee to use e-Courts API to integrate e-Courts Project and CCTNS on 16.2.2021, with copy of the application submitted by the CCTNS department to the Punjab and Haryana High Court. The request was processed by the E-Committee and the necessary credentials were shared with the Central Project Coordinator, Punjab and Haryana High Court on the next day i.e. 17.2.2021.

vi. That as per the procedure defined above, the Punjab Prisons Department may apply to the Punjab and Haryana, High Court (i.e. to Central Project Coordinator) for availing the APIs to integrate with e-Prison. The CPC, Punjab and Haryana High Court may recommend and

forward the request to the E-Committee, Supreme Court of India for further processing.

7. *That, similarly, in case of access of CCTNS by the Punjab Prison Department, it is submitted that the CCTNS is a Punjab State Police software application and they are the owner of its data. The access of the data of the CCTNS by the Punjab Prison Department can be provided by the Punjab State Police. NIC has no role in the CCTNS software application.*

8. *That on 27.1.2021, the NIC received a letter on email from the IG Prisons, Punjab for read only access of CCTNS and e-Courts. In this regard, a Video Conference was held with the Punjab Prisons Officials on 28.1.2021, wherein the process of getting access to these two software were explained to them. It was explained that the CCTNS Applications doesn't belong to NIC and for the access of e-Courts, the Prison Department can approach the E-Committee, Supreme Court of India.*

9. *That on 5.3.2021, the NIC received a letter through email from the ADG Prisons, Punjab, where it was desired for activation of e-Custody Certificate module of e-Prisons after incorporating the changes consequent to a judgment passed by this Hon'ble High Court. The NIC deployed this module at the test site on 17.3.2021 for the testing by the Punjab Prisons. Subsequently, this new e-Custody Certificate module was actived on 31.3.2021 after incorporating the suggestions/feedback by them. The same was also communicated to the ADG Prisons, Punjab vide letters dated 17.3.2021 and 31.3.2021. The true copies of the letters dated 17.3.2021 and 31.3.2021 are annexed, herewith as Annexure R-2/1 and Annexure R-2/2, respectively.*

10. *That for access to the ICJS application software at each Prison of the Punjab Prison Department, VPN connections were already provided by NIC to the Punjab Prisons. This access is operational since 3.12.2019. The Punjab Prisons need to get the ICJS user-ids for all the prisons from the ICJS coordinator of Punjab State Police.*

11. *That, therefore, in the light of the submissions made above, it is respectfully submitted that the decision to share the data of a particular project with any other entity rests solely with that data owner and not with the NIC.”*

After hearing the counsel for the State as well as counsel for respondent No.2 – NIC, the following directions are issued to the State of Punjab through the Chief Secretary, Advocate General, Punjab as well as the Additional Director General of Police, Prisons, Punjab, to apply to the Punjab & Haryana High Court (i.e. Central Project Coordinator) for availing the API to integrate with e-Prisons with a further request to the Central Project Coordinator, Punjab & Haryana High Court, to recommend and forward the request to e-committee to Hon'ble Supreme Court of India for further processing.

In terms of the affidavit of the Additional Director General of Police, Prisons Department, Punjab, it is directed to initiate process of activation of e-Custody Certificate module of e-prisons on the pattern of Phoenix application of Haryana prisons, in order to provide correct and complete details of all the pending cases of a convict/undertrial within a period of 01 month.

Mr. Joginder Pal Ratra, Deputy Advocate General, Punjab and Mr. Himmat Singh, Deputy Advocate General, Haryana, are appointed as *amicus curiae* to monitor the initiation of process of activation by the office of Additional Director General of Police, Prisons Department, Punjab, and to ensure that the Advocate General, Punjab get access to all data relating to Prisons Department.

The Chief Secretary to Government of Punjab is also directed to provide access to the Advocate General, Punjab, to all data relating to Prisons Department to review the same from time to time. The *Amicus Curiae* will apprise the Court about the same by filing status report.

This process be completed within a period of 06 months from the date of receipt of certified copy of this Court.

Disposed of.

A status report be filed by the *Amicus Curiae*, Advocate General Punjab, Chief Secretary to Government of Punjab and the Additional Director General of Police, Punjab, on or before 21.03.2022.

(ARVIND SINGH SANGWAN)
JUDGE

16.09.2021
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No