

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

CRM-M-12547-2021

Date of Decision:07.10.2021

UPASHU GARG @ UPANSHU GARG

...Petitioner

Versus

STATE OF PUNJAB ANDORS

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr.Ishan Gupta, Advocate for the petitioner

Mr.RanaHarjasdeep Singh, DAG Punjab

Mr.SumeetPuri, Advocate for respondents no.5 and 6

Mr.Sumeet Goel, Special Public Prosecutor for CBI with
Mr.A.K.Ranolia, Advocate

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

On 27.09.2021, the following order had been passed by this Court:

Case heard by way of video conferencing.

CRM-M-12547 of 2021

“By this petition, filed under the provisions of Section 482 readwith Section 483 of the Cr.P.C., the petitioner is praying for re-investigationin case FIR no.51, dated 22.02.2020, registered at Police Station SadarDhuri, District Sangrur, for the commission of an offence punishable underSection 22 of the NDPS Act, (with an offence punishable under Section 29thereof added subsequently in the FIR), by an independent agency, with a further direction sought to direct the investigating agency to “scientificallyinvestigate” the peculiar aspects and prevalent facts and circumstances of theentire case.

Learned counsel for the petitioner today again points to the factthat though the SSP has stated in his affidavit that the

persons who are shown in the photograph Annexure P-2 were not identified by even the SHO of the police station to be respondents no.5 and 6 herein, i.e. two police officials from the same police station, however, he submits that as per the recording of the CCTV camera, if even the rear profiles of the persons are taken, it would turn out that they were actually respondents no.5 and 6, with the petitioner between them, with one of them speaking on a mobile phone and the time recorded being 8:35:19 p.m. on 22.02.2020, i.e. the very day that the petitioner was apprehended but shown to have been apprehended after 10.10 p.m. as per the FIR.

He submits that the petitioners' father is a licensed chemist with the petitioner also holding a Diploma in Pharmacy and in any case no drugs were actually recovered from the petitioner, with him reiterating that respondents no.5 and 6 asked him for illegal gratification and upon him not having given the same, a false case was registered.

As regards the SSPs' contention that the petitioner and two persons whose names are Pawan Kumar and Shisham Pal were in touch with each other, those are persons who were legally selling drugs to the petitioners' father; and therefore there could have been phone calls exchanged between them.

As has been pointed by the learned State counsel, and as is stated by the SSP in his affidavit, the petitioners' contention is that he has nothing to do with those persons, but with 103 phone calls having been exchanged between them, obviously that statement is a blatant lie (as contended on behalf of the respondent-State), and prima facie, that statement seems to be incorrect to this court also, (though of course that is not a final observation made by this court).

In fact if what learned counsel is stating today, to the effect that they were legally selling drugs to his fathers' licensed chemist shop, that fact should have been stated in the petition itself (which counsel submits that he did not know at that stage).

Be that as it may, with the learned counsel for the petitioners' specific assertion being that even if the profiles of the

*three persons in the photograph Annexure P-2 are verified by an independent agency, it would be found to be that it is the petitioner with respondents no.5 and 6 on either side of him, and the photograph at least shows the time to be 8:35:19 p.m. and definitely not after 10.10 p.m. (which is time at which a secret informer is alleged to have informed respondents no.5 and 6/one of them as regards the petitioner selling intoxicating drugs), then, even in terms of the ratio of the judgments cited by the learned counsel for the petitioner today, i.e. **Neetu Kumar Nagaich v. State of Rajasthan** (SC), 2020 (4) RCR (Crl.) 289, as also **Naresh Kumar Mangla v. Anita Aggarwal**, AIR 2021 SC 277 and **Dharam Pal v. State of Haryana**, 2016 (1) RCR (Crl.) 926, in my opinion, it would be appropriate to order de novo investigation.*

The question then would be whether such investigation should be handed over to a completely independent body like the CBI, or to the Punjab Bureau of Investigation.

Whereas otherwise I may have been inclined to direct investigation by the Punjab Bureau of Investigation but with learned counsel perhaps correctly having pointed out that usually it is seen that the State agencies try and protect their own officials in 'drug cases', therefore, even though investigation in every single 'drug related case' cannot be handed over to the CBI, in my opinion, this is one case where it should be handed over, in view of the fact that the SSP of the district has also very categorically stated that "the SHO also did not identify respondents no.5 and 6 from the aforesaid photograph", with the assertion of the learned counsel for the petitioner being exactly as it is above, i.e. that even from the profiles of the three persons in that photograph, it would not be difficulty to identify the petitioner and respondents no.5 and 6 by an independent agency.

Hence, the trial court is directed to stay proceedings till the next date of hearing, with de novo investigation ordered by this court, to be conducted by the CBI.

Consequently, the Central Bureau of Investigation through its SP, SCB, CBI, Chandigarh, Plot no.8, Sector-30A,

Chandigarh, (having jurisdiction over Punjab region), is ordered to be impleaded as respondent no.7 in the present petition, with the Registry directed to carry out the necessary correction in the memos of parties.

Let notice be issued to the newly added respondent through its Senior Standing Counsel, Sh. Sumeet Goel, Sr. Advocate, with Mr.A.K.Ranaulia, Advocate, accepting notice on behalf of the CBI, for at least a short affidavit of the competent authority to be filed in response to this courts' direction.

Adjourned to 07.10.2021.

To be shown in the urgent motion list.”

Today, Mr.Sumeet Goel, learned Special Public Prosecutor, CBI has appeared and has submitted that in terms of the said order passed by this Court, the CBI has already registered RC No.2(S)/2021/CBI/SCB/CHG on 06.10.2021, and a letter has been written to the Senior Superintendent of Police, Sangrur, for providing police file records of the case.

In fact, an affidavit to that effect has been filed by the Deputy Superintendent of Police, CBI, Special Crime Branch, Chandigarh, dated 06.10.2021, which is ordered to be taken on record.

Naturally, while conducting a *de novo* investigation in the matter, all the aspects of the case shall be gone into in thorough detail by the investigating agency, to determine the innocence or guilt of the petitioner, and with it to be repeated by this Court that the essential reason why this Court had directed *de novo* investigation (as already noticed in the order dated 27.09.2021), is because even the SSP has stated that as per the SHO (concerned), the persons who are shown to be on either side of petitioner in the photographs annexed with the petition as Annexure P-2, are not police officials. The said photographs are seen to be (at least as per the copy annexed with the petition), showing the time to be 20:35:19, i.e. 8:35:19 pm, whereas, as already noticed in the order earlier passed,

the secret information itself, leading to the registration of the FIR, is stated to have been received by the arresting officials after 10:00 pm on the said date, i.e. 22.02.2020. No comment, at this stage, is made, with the CBI to naturally go into that aspect also.

With the above observations, the petition stands disposed of.

07.10.2021

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(AMOL RATTAN SINGH)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No