

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-26335-2021 (O&M)

Date of Decision:- 11.10.2021

Saurav

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amaninder Preet, Advocate for the petitioner

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by Inspector Mukhtiar Singh.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner, who is brother of accused Sahil Kumar @ Gora, has approached this Court seeking transfer of investigation in FIR No. 244 dated 9.11.2020, registered under Sections 22/29 of the NDPS Act, 1985 at Police Station City Kotkapura, District Faridkot to an independent agency like the Central Bureau of Investigation, Vigilance Bureau, Punjab or any other agency.
2. The FIR was lodged at the instance of SI Kulbir Chand wherein it is alleged that on 9.11.2020, when he was present in the office of CIA Staff, Jaito, then at about 8:15 p.m., ASI Sikander Singh informed him telephonically that while he alongwith other police officials was patrolling in the area of Kotkapura, they had come across a young boy going on a scooty, who upon noticing the police party tried to turn back but was apprehended by the police

on the basis of suspicion that he was carrying some intoxicant. Upon receipt of said information, Sub-Inspector Kulbir Chand reached at the spot at about 8:30 p.m. Upon enquiry, the apprehended young boy disclosed his name as Sahil Kumar. S.I. Kulbir Chand identified himself and extended an offer in terms of Section 50 of the NDPS Act (hereinafter referred to as '*the Act*') regarding option of being searched in the presence of some Magistrate or a gazetted officer. Sahil Kumar opted to be searched in the presence of some gazetted officer, upon which DSP Jaspal Singh was requested to come at the spot, who reached at about 9:35 p.m. DSP Jaspal Singh also extended an offer in terms of Section 50 of the Act but Sahil Kumar reposed confidence in the DSP. The search of the Aactiva scooty led to recovery of three boxes of 'Tramadol Hydrochloride' 100 mg Celvidol 100-SR (a total of 1500 tablets), apart from an amount of ₹ 8,500/-. The personal search of Sahil Kumar did not lead to any incriminating recovery.

3. It is further the case of prosecution that the aforesaid Sahil Kumar suffered a disclosure statement on 11.11.2020 regarding involvement of one Ajay Kumar Jindal and consequently, Ajay Kumar Jindal was arrested on 16.11.2020. It is the case of prosecution that upon arrest of Ajay Kumar Jindal, he made a disclosure statement pursuant to which he got recovered 980 loose tablets from an open space near Government College, Kotkapura.
4. The learned counsel for the petitioner has submitted that in the instant case his brother Sahil Kumar has been falsely implicated. The learned counsel for the petitioner submits that his brother had left home on 8.11.2020 in the evening in connection with some household work on his friend's motorcycle. However, when his brother was near "Battian-wala Chowk", Kotkapura, he was hit by a Swift car in which some police officials were sitting, which was

being driven by SHO Sanjeev Kumar. However, later, he was picked up by the police from the street and was detained illegally and was subsequently implicated falsely in the FIR in question i.e. FIR No. 244 dated 9.11.2020, Police Station City Kotkapura. The learned counsel has further submitted that even the alleged disclosure statement made by Sahil Kumar nominating Ajay Kumar Jindal has been concocted by the police. The learned counsel submits that in order to prove the innocence of Sahil Kumar and his false implication, an application had been moved before the trial Court for preserving the call details, and that the said call details clearly show that the police officer concerned especially the SI Kulbir Chand and DSP Jaspal Singh were never present at the spot. The learned counsel has submitted that it is a case where the police officials are all out to go to any length to throw Sahil Kumar as well as his co-accused behind bars and that the entire matter needs to be reinvestigated by some independent agency like CBI.

5. Opposing the petition, the learned State counsel has submitted that the brother of petitioner has been into drug peddling and the fact that he is involved in more than one case cannot be interpreted to mean that he is being falsely implicated but would rather show that he is repeatedly indulging into drug trafficking. The learned counsel has further submitted that till date there is no such finding of any court that the police officials are inimical towards Sahil Kumar or that he had been falsely implicated in any case. The learned counsel submits that the police officials had effected recoveries in discharge of their official duties. The learned State counsel has further submitted that since huge recovery had been effected from Sahil Kumar who had disclosed the name of Ajay Kumar Jindal and the said disclosure statement virtually stands substantiated from the recovery of contraband at

the instance of Ajay Kumar Jindal also, there is no room to doubt the case of prosecution or the manner of investigation and the petition deserves to be dismissed.

6. I have considered rival submissions addressed before this Court.
7. This Court, while deciding bail application of petitioner's brother Sahil alongwith bail application of co-accused Ajay Kumar Jindal, by way of passing a common order of even date has noticed the conduct of the police, which is questionable and rather creates some kind of doubt as regards fairness in investigation. The relevant portion from order of even date passed in common order in CRM-M-24914-2021 and CRM-M-31348-2021 is extracted below :-

“From the aforestated sequence of events, the following facts can be discerned:-

- (i) that the petitioner - Ajay Kumar Jindal had earlier been involved in FIR No. 237 dated 25.12.2019, Police Station City Kotkapura, District Faridkot wherein although he was not named in the FIR or ever arrested at the spot but was subsequently nominated on the basis of a disclosure statement.
- (ii) the petitioner Ajay Kumar Jindal, while agitating his false implication, moved an application for preserving CCTV footage of the police stations concerned wherein direction was given by Additional Sessions Judge, Faridkot on 15.1.2020 to preserve the said footage.

- (iii) However, despite the aforesaid order dated 15.1.2020, CCTV footage was not preserved. Ajay Kumar Jindal filed a petition in the Court for transfer of investigation in March, 2020.
- (iv) In April, 2020, the police presented a challan in a hurried manner and in the absence of - Ajay Kumar Jindal on account of which the petitioner appeared before higher authorities and apprised them about the conduct of SI Kulbir Chand.
- (v) Shortly thereafter, in November, 2020, - Ajay Kumar Jindal came to be involved in the instant case wherein he has been nominated as an accused on the basis of a disclosure statement and a recovery of 980 tablets is shown to have been effected at his instance from an open space.”
8. As far as the call details are concerned, voluminous call details has been annexed with the reply of the State. The learned counsel has pointed out that the said call details shows that infact DSP Jaspal Singh, the gazetted officer who is stated to have been called at the spot was never ever present at the spot and apparently his signatures have subsequently been obtained on the relevant memos etc. It has also been pointed out that even the presence of SI Kulbir Chand at the spot is rendered doubtful in view of tower location record.
9. Having regard to the facts and circumstances of the case and the fact that challan already stands presented in the instant case, this Court does not deem appropriate to order any re-investigation at this stage. The said prayer, as such, is declined. However, keeping in view the conduct of the police particularly the fact that the police has not even preserved the CCTV footage

despite a specific order passed by the Court and that the call detail record could substantiate the assertions of the petitioner regarding false implication, the trial Court is directed to marshal the evidence meticulously as some kind of doubt in the conduct of the police has been created. The petitioner, through his counsel, is directed to make a concise statement upon examining all the call details as regards his contention regarding the presence/absence of the police officials at the relevant time. Such concise statement be made individually in respect of each of the police official by extracting relevant entries from the call detail record which is rather voluminous and to mention the relevant serial number and page number against each extracted entry in the statement to be made in tabular form, so as to enable the trial Court to appreciate the contentions effectively. In case, any such concise unambiguous statement is submitted on behalf of the petitioner/co-accused by way of moving an appropriate application, the same shall be duly taken into account at the time of final arguments, subject of course, to admissibility of Call Detail Record.

10. The petition stands disposed of accordingly.

11.10.2021

kamal

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No