

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr.No.124

CRM-M No.25805 of 2021

Date of Decision: 29th July, 2021.

Nirmal Singh Bhangu

...Petitioner

Versus

State of Punjab

...Respondent

(Heard through Video-Conferencing)

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Datt, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

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MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has invoked the jurisdiction of this Court under Section 482 Cr.P.C. for seeking the quashing of the order dated 24.06.2021(Annexure P-1) passed by Judicial Magistrate Ist Class (Duty), Shri Muktsar Sahib {for short 'JMIC (Duty)'} for getting his (petitioner's) medical examination conducted at Rajindera Hospital, Patiala as well as the order dated 28.06.2021 (Annexure P-2) whereby JMIC (Duty) directed the Superintendent, District Jail, Sri Muktsar Sahib, to make the necessary arrangements for his (petitioner's) production before the Special Court at Bemetra, Chhattisgarh, on 13.07.2021.

2. As per the factual backdrop culminating in the filing of

this petition, the petitioner is, presently, confined in the afore-said Jail as an undertrial in the criminal case arising out of the FIR bearing No.42 dated 01.06.2016 registered at Police Station Bathinda Contonment under Sections 406 and 420 IPC. However, the Special Court, Bemetra issued a production warrant (Annexure P-9) directing the Superintendent of the said Jail to produce the petitioner before it to give reply in the Criminal Case pertaining to the FIR bearing No.173 of 2017 registered at Police Station Bemetra under Section 420 read with Section 34 IPC and Section 10 of the Chhattisgarh Protection of Depositors Interest Act, 2005 as well as Sections 3 and 4 of the Price Chits and Money Circulation Schemes (Banning) Act, 1978 and for further proceedings as well. Mr. Dhal Singh Sahu, Sub Inspector, Police Station Bemetra, presented this production warrant before the Superintendent of the afore-said Jail for its compliance but the petitioner informed that he was not feeling well. Then, he was got medically examined at Civil Hospital, Sri Muktsar Sahib and the doctors opined that he was 'unfit' for long travelling due to his medical condition.

3. Thereupon, as mentioned in the impugned order Annexure P-1 itself, the said Sub Inspector moved an application, through the Assistant Public Prosecutor concerned, before the JMIC (Duty) for getting the medical examination of the petitioner conducted by the Panel of senior doctors in Government Rajendra Hospital, Patiala and also for the compliance of the production

warrant issued by the said Court at Bemetra, while pleading that the petitioner was got examined by the jail authorities at the local Civil Hospital in his (SI's) absence despite his having raised the objection for the same. It has also been mentioned in the afore-referred impugned order that the Superintendent of the Jail, in his reply to the said application, submitted that when he was completing the formalities qua the production warrant, the petitioner stated that he was not feeling well and was unable to travel to Chhatisgarh. After hearing the State counsel and the counsel for the petitioner on the above-said application, the impugned order Annexure P-1 was passed therein. Then, on the receipt of the report on the medical condition of the petitioner from Rajindra Hospital Patiala, the JMIC(Duty) passed the impugned order Annexure P-2 on 28.06.2021 mentioning therein that as per the report of the said Medical Board, there was no apparent restriction for long distance travelling by the petitioner, i.e from the said Jail to Bemetra and one doctor may accompany him.

4. However, on 06.07.2021, the petitioner was taken to Guru Gobind Singh Medical College & Hospital at Faridkot for his medical examination and the Medical Board, after examining him there, referred him to the Gastroenterology Department, PGIMER, Chandigarh (for short "PGI"). The petitioner was brought to PGI on 09.07.2021 and vide the order as passed by this Court on that day, the Director, PGI was directed to constitute a Medical Board comprising of the Experts in view of the ailments of the petitioner as reported in

his medical record and the said Board was directed to examine the petitioner and to give specific opinion qua his (petitioner's) fitness to travel the distance up to Bemetra (Chhatisgarh), by 12.07.2021. The Medical Board, after examining the petitioner, categorically observed and recommended that the petitioner was 'fit' to travel.

5. I have heard learned Senior counsel for the petitioner as well as learned State counsel in the instant petition and have also perused the file thoroughly.

6. Learned Senior counsel for the petitioner has contended that the note appended in the concluding part of the production warrant (Annexure P-9) to the effect that the accused, i.e. the petitioner, will be handed over to the above-named Sub Inspector shows that the said production warrant has been issued for the purpose of handing over the petitioner to the police for the investigation of the criminal case as mentioned therein whereas the expressions “other proceedings under this Code” and “for the purpose of any proceedings” as mentioned in Section 267 (1) and (1) (a) of Cr.P.C, can, in no way, be construed to be including the “investigation proceedings” and therefore, the Special Court at Bemetra had no jurisdiction to issue the warrant (Annexure P-9) for the production of the petitioner before it in connection with the criminal case specified therein.

7. However, I do not find any merit in the said contention because the afore-referred note is meant for merely informing the

concerned Jail Authorities to hand over the petitioner to the above-named Sub Inspector for the purpose of execution/compliance of the said production warrant. Even otherwise, Section 267(1) Cr.P.C provides as under:-

“(1) Whenever, in the course of an inquiry, trial or other proceedings under this Code, it appears to a Criminal Court:-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness,

the Court may make an order requiring the officer-in-charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

.....”

8. A bare reading of the afore-mentioned provisions makes it crystal clear that besides issuing a production warrant for securing the presence of a prisoner during the course of an inquiry or trial for the purpose of answering to a charge of an offence or for examining him as witness, the Criminal Court can also issue such warrant for the purpose of any other proceedings under the Cr.P.C. There are specific provisions in the said Code defining and relating to the 'investigation' of a criminal case by the police. Therefore, the expressions *“other proceedings under this Code”* and *“for the purpose of any*

proceedings” can, by no stretch of imagination, be taken to be the expressions excluding the “investigating proceedings”.

This view stands fortified by the verdict rendered by the Division Bench of Kerala High Court in **Bineesh vs. State of Kerala**, **Crl. M.C Nos. 4162 of 2005 & 150 of 2006 (Decided on 20.06.2006)**, to the effect that “*even if a person is under remand by the order of a Magistrate in a criminal case and another criminal case is registered against him in another Magistrate's Court, that Magistrate is justified in issuing production warrant under Section 267 Cr.P.C for the purpose of investigation in that case*”.

Moreover, the Full Bench of Rajasthan High Court has also categorically observed in **State of Rajasthan vs. Santosh Yadav**, **(F.B. Cr. Misc. Petition No.1233 of 2001 decided on 22.02.2005)** that “*where a prisoner is lodged in judicial custody, the police can seek permission to remove an accused from judicial custody to police custody for completion of the investigation in another case and a production warrant under Section 267 Cr.P.C can be issued and the expressions “other proceeding” and “for the purpose of any proceeding” would include “investigation” as defined under Section 2(h) Cr.P.C.*” Resultantly, it is held that the Special Court at Bemetra was well within its power to issue the production warrant of the petitioner to secure his presence before it in connection with the criminal case registered within its jurisdiction.

9. Learned Senior counsel for the petitioner has also

contended that the petitioner was confined in the District Jail at Sri Muktsar Sahib in connection with the case registered at Bathinda Contonment and was facing trial in the Court at Bathinda and hence, the Magistrate at Sri Muktsar Sahib had no jurisdiction to entertain the application moved by the above-named Sub Inspector through the Assistant Public Prosecutor and to pass both the impugned orders.

10. But, this contention also does not hold much water in view of the fact that although the petitioner was facing trial in the Court at Bathinda but he was lodged in District Jail, Sri Muktsar Sahib and therefore, the Duty Magistrate, Sri Muktsar Sahib, being the jurisdictional Magistrate of the area where the cause of action to move the said application arose, was well within his power to entertain and also to pass the impugned orders on the same.

11. Then, learned Senior counsel for the petitioner has contended that since the petitioner was facing trial in the Court at Bathinda in connection with the above-mentioned criminal case, therefore, the said production warrant (Annexure P-9) could not have been issued by the Special Court at Bemetra for securing the presence of the petitioner before it.

12. However, this contention is again devoid of merit in view of the observations made by this Court in “*Charanjit Singh vs. State of Punjab Criminal Misc. No.27680-M of 2000 decided on 22.05.2001*” to the effect that “*even though the accused were facing trial in various Courts at Delhi and were lodged in Tihar Jail, Delhi*

but Section 269 Cr.P.C would not authorise the Officer-in-Charge of the Prison (Tihar Jail) not to produce the accused in the Courts in Punjab, Haryana and Chandigarh in pursuance of the production warrants, merely on the ground that they were already facing trial in the Courts at Delhi". These observations are fully applicable to the present case.

13. Another contention of learned Senior counsel for the petitioner is that the petitioner is a chronic patient suffering from several ailments and is constantly under the medical treatment for the same and he has referred to Annexure P-6, i.e the copy of the order dated 13.06.2016 passed by the Division Bench of this Court in CRWP No.729 of 2016 wherein the petitioner had been arrayed as respondent No.11 and he has pointed out that it has categorically been directed in the concluding para thereof that the petitioner would be taken in custody by any other agency only with the leave of the Court and he has, further, contended that the said production warrant (Annexure P-9) had been issued by the Special Court, Bemetra without complying with the afore-discussed direction.

14. Again, these contentions are not tenable because the afore-said CRWP No.729 of 2016 already stands dismissed for non-prosecution as is explicit from the order passed therein on 12.10.2017 to that effect. After the dismissal of the said petition, the above-discussed interim direction also came to an end as the same cannot be taken to be surviving for all the times to come even after the decision

of the afore-said petition.

15. Lastly, learned Senior counsel for the petitioner has pointed out that in a similar petition bearing CRWP No.6427 of 2020 tilted as “*Lawerence Bishnoi vs. State of Haryana & Others*”, this Court had passed an order on 21.12.2020 issuing directions qua the production of the above-named petitioner before various authorities in connection with several criminal cases registered against him but the operation and implementation of the said order has been stayed by Hon'ble Supreme Court vide the order dated 04.02.2021 as mentioned in the order dated 04.05.2021 passed by the Co-ordinate Bench of this Court in CRM-M No.18597 of 2021 and he has contended that in these circumstances, the petitioner cannot be produced in the Special Court at Bemetra in compliance of the production warrant Annexure P-9.

16. Again, this contention is not legally sustainable because a perusal of the above-said order dated 21.12.2020 reveals that the petitioner therein had pleaded that he apprehended his elimination by the police by way of some fake encounter during the course of his transit for being produced before various authorities in Haryana and U.T. Chandigarh and the implementation and the operation of the said order is stated to have been stayed by the Apex Court whereas in the case in hand, the petitioner seeks the quashing of both the impugned orders on the ground that he is not medically fit to travel up to the distance from the said Jail to Bemetra.

17. Before parting with this judgment, this Court is constrained to express its deep concern over the entire afore-discussed act and conduct on the part of the petitioner who has left no stone unturned in a bid to thwart the process of the administration of criminal justice so as to evade his production in the above-said Special Court because as specifically mentioned in the preceding paragraphs, when the Superintendent of the said Jail was completing the formalities to comply with the production warrant (Annexure P-9), he (petitioner) started saying that he was not feeling well and then, he was taken to the local Civil Hospital where he was declared to be 'unfit' to travel. When he was medically examined by the Board at Rajindera Hospital, Patiala, in compliance of the impugned order Annexure P-1, the Board opined that there was no apparent restriction on his travelling and thereafter, the impugned order Annexure P-2 was passed on 28.06.2021 but on 06.07.2021, he was again taken to Guru Gobind Singh Medical College & Hospital at Faridkot by the Jail authorities and was, finally, referred to the PGI and the Medical Board at PGI also opined that he was fit to travel.

18. The entire afore-referred sequence of the events unequivocally speaks volumes of the fact that the petitioner has abused the process of law by misusing his medical condition and strangely, the Jail Authorities as well as the authorities at the local Civil Hospital, also, for the reasons best known to them, seem to be acting in unison with the petitioner to help him out in evading his

production at the above-said Special Court and this conduct on their part is highly deplorable because all the limbs of the system of the administration of criminal justice need to act and work in the required and desired manner so as to make it achieve the goal of its very establishment.

19. As a sequel to the fore-going discussion as well as the observations, it follows that the petition in hand deserves dismissal. Resultantly, the same stands dismissed accordingly.

(MEENAKSHI I. MEHTA)
JUDGE

29-07-2021.
seema

Whether speaking/reasoned?	Yes/No
Whether Reportable?	Yes/No