

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CRM-M-26385 of 2021
Date of Decision:27.09.2021

Chain Singh

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Raj Kapoor Malik, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

On 14.07.2021 the following order had been passed by this court:-

“Case heard via video conferencing.

By this petition, the petitioner seeks the concession of anticipatory bail, upon FIR no.66, dated 24.3.2021, having been registered at Police Station Rajaund, District Kaithal, alleging therein the commission of offences punishable under Section 21(c) of the NDPS Act, 1985 (with Section 29 of the NDPS Act, 1985, having been added later on).

On 12.7.2021 learned counsel for the petitioner had been asked to take instructions as to whether the mobile phone numbers referred to in paragraph 8 of the order of the learned Special Judge, Kaithal (Annexure P-2), dated 2.7.2021, admittedly belong to the petitioner or not; because the contention of the investigating agency before that

court (on a similar application having been filed there), was that the petitioner, from the said mobile numbers, was in contact with the two accused who were stated to have been apprehended carrying 2.85 kgs of smack (upon secret information stated to have been received by the police and a police picket/ Naka having been set up thereafter).

Today, learned counsel submits that the mobile numbers undoubtedly belong to the petitioner but even the manner of arrest of the co-accused (with whom the petitioner is stated to have been in touch and with them alleged to have made a disclosure statement that they had purchased the smack from the petitioner), leaves a huge question mark as to whether the occurrence actually took place in the manner described in the FIR, or they could not have been arrested in the manner shown.

To support that argument, he points to the FIR to submit that the author of the FIR (ASI Dalsher Singh) is posted in the CIA Staff, Kaithal, and it is not the case of the investigating agency that he was informed telephonically by a secret informer, but was informed by a secret informer coming to meet him and the police party that was stated to be travelling on the road. He submits that it would be difficult to understand how the secret informer would know the exact location of such a police party.

He further submits that the natural thing would in fact be either for the secret informer to have rung up the person in the police party whose mobile number he would have, or to reach the police post which has been permanently stationed for the past 20 years very near the place of occurrence.

Hence, the contention is that even the recovery has been planted on the other two co-accused, who are alleged to have made a disclosure statement in police custody against the petitioner.

Notice of motion.

Mr. Neeraj Poswal, learned AAG, Haryana, accepts notice at the asking of the court.

Upon query to him as to whether there are any other criminal cases registered against the petitioner, he submits that so far at least he has no instructions in that regard.

It is to be noticed that learned State counsel has vehemently argued that the petitioner having been in touch telephonically, as per call detail records obtained, with the two accused who were apprehended with 2.85 kgs of smack, he does not deserve the concession of even interim bail.

Even considering that argument, to repeat, counsel for the petitioner having raised a doubt on the manner of arrest of the co-accused, this order is being passed, with the SP, Kaithal, now directed to file his own affidavit in reply to the petition, annexing therewith the call detail records of the police party that is stated to have apprehended the co-accused of the petitioner in the area of village Kithana, District Kaithal, on 24.3.2021.

The call detail records shall be duly scrutinized by the SP and annexed with his affidavit, with him to detail therein as to where each member of the police party was found to be between 9.00 pm on 24.3.2021 till 1.00 am on 25.3.2021.

In the meanwhile, without making any comment on the actual merits of the case but with learned counsel for the petitioner having at least raised a doubt at this stage in the mind of this court (only for the purpose of this petition), even exercising jurisdiction in terms of sub-clause (ii) of clause (b) of sub-section (1) of Section 37 of the NDPS Act, 1985, the petitioner is directed to join investigation within 5 days and upon him so joining if he is sought to be arrested, he shall be released on bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Ilaqa Magistrate.

He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the investigating officer does not actually join the petitioner in investigation, he would appear before the learned Ilaqa Magistrate

immediately, who would then summon the arresting officer and direct him to join him in investigation, in terms of the order of this court.

Adjourned to 17.8.2021. ”

Thereafter on 06.09.2021 the following order had been passed by this court:-

“Pursuant to the order earlier passed by this court, an affidavit of the Superintendent of Police, Kaithal, dated 13.08.2021, has been filed, which is ordered to be taken on record.

Though learned State counsel points out that, firstly, even as per the said reply, it shows that the call details records of the petitioners, as also those who were apprehended at the spot as per the FIR, showed that they were in touch with each other over a period of 03 days, from even locations in Rajasthan, and that the call details records of the police party were also found to be in the area of Village Kithana at the relevant time, learned counsel for the petitioners submits that the location of the mobile phones of the persons stated to have been arrested near Village Kithana have not been given by the Superintendent of Police.

Adjourned to 26.09.2021.

The Superintendent of Police, Kaithal, is directed to file another affidavit, giving therein the call details records of all three persons who are stated to have been apprehended in the area of Village Kithana on the date and time in question in the FIR, stating in the affidavit as to whether they were also near Village Kithana at that time.

Interim order to continue, till the next date of hearing.”

Pursuant thereto, an additional affidavit has been filed by the Superintendent of Police, Kaithal, dated 22.09.2021, which is ordered to be taken

on record.

In the said affidavit, it is stated that as regards the co-accused of the petitioner, i.e. Gurpreet Kaur @ Gopi, Gopal Singh and Virender @ Ladi, the mobile tower locations of these persons were found either in Rajasthan or in Madhya Pradesh or in District Mohindergarh in Haryana, on 23.03.2021.

However, one of the mobile numbers shown to be used by Gurpreet Kaur @ Gopi, she is stated to have been present (on the basis of that mobile phones' location) possibly in the area of village Chuharpur (District Jind) – Kithana (District Kaithal) at 07:17 p.m., about 6 to 7 kms. away from the place (alleged) of occurrence.

Learned counsel for the petitioner however submits that all three of them, i.e. Gopal Singh, Gurpreet Kaur @ Gopi and Virender @ Ladi are alleged to have been all arrested together in a Swift Dezire car near Kithana, District Kaithal; but with Gopal Singh's mobile tower location shown to be in Rajasthan at 05:08 p.m. on 24.03.2021, the SP has very correctly stated in paragraph 3 of his additional affidavit that as per the said mobile tower locations it cannot be stated that their location was near village Kithana at the time in question.

By this petition, as already noticed, the petitioner has been arraigned as an accused on an alleged disclosure statement made by the aforesaid co-accused in police custody, but with him being in touch with them telephonically and therefore stated to be also involved in the sale/purchase etc. of contraband, as is stated to have been recovered from them.

Keeping in view the aforesaid additional affidavit filed by the SP,

Kaithal, though of course it needs to be noticed by this court that mobile phone locations cannot be taken to be conclusive proof of the presence or non-presence of a person in a particular area, with that person quite easily having left his/her mobile phone at a different place altogether and having come to a different place, yet in my opinion, the petitioner has made out a case by which he should be admitted to bail absolutely, even in terms of Section 37 (1) (b) (ii) of the NDPS Act, 1985, looking at the fact that whereas all his co-accused are stated to have been arrested together, one of them (Gopal Singh) seemingly was in Rajasthan at that time, his mobile number having received a call in Rajasthan at 05:08 p.m. on 24.03.2021, as per the chart depicted on page 4 of the SPs' additional affidavit.

Hence, the order passed on 14.07.2021 is made absolute on the same terms and conditions, without making any further comment on the actual merits of the case.

September 27, 2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No