
Present: Ms.Satpreet Grewal, Advocate,
for the petitioner in CRM-M-27470-2021.

Mr. Damanjeet Bhoriwal, Advocate,
for the petitioner in CRWP-1909-2021

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Case heard *via* video conference.

CRM-M-27470-2021

On 16.07.2021, 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.100, dated 19.5.2021, having been registered at Police Station Dasuya, District Hoshiarpur, alleging therein the commission of offences punishable under Sections 22/61/85 of the NDPS Act, 1985 (with Section 29 of the NDPS Act, 1985 having been added later vide DDR no.31 dated 21.5.2021).

Learned counsel for the petitioner submits that with there being no other criminal case ever registered against the petitioner he has allegedly been named as the person from whom 30 grams of intoxicant powder was purchased by the person who is stated to have been arrested in possession of such powder, the case of the prosecution being that upon him being stopped by the police he took out the polythene bag from his pocket and threw it away, and upon search of that bag the aforesaid intoxicant substance was found by a patrolling party led by an Assistant Sub Inspector of Police.

The argument therefore is that the petitioner having been allegedly named by such person in police custody, there would be no evidentiary value to such statement and further, the petitioner having no criminal background he deserves to be admitted to anticipatory bail; and in any case with the quantity of the contraband alleged to have been recovered (as per the case of the investigating agency) from the co-accused, also being non-commercial quantity, there would be no reason to deny interim bail to the petitioner.

Notice of motion.

Mr.Saurav Khurana, learned DAG, Punjab, accepts notice at the asking of the court.

He reiterates the contents of the FIR, further of course submitting that the petitioners' name having been disclosed by the person apprehended with the contraband, he does not deserve the concession of pre-arrest bail.

Having considered the matter, though it would be rather strange that a person with no criminal antecedents would be named by the police who may not even know his name, yet, for the reason that his name is alleged to have been disclosed in police custody and the quantity of contraband shown to have been recovered from the co-accused is, *prima facie* at least, said to be non-commercial (with the FSL report still to come as per learned State counsel), the petitioner is directed to join investigation within a week 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.

xx xx xx xx

It needs to be noticed in this case, that earlier most FIRs registered in Punjab in respect of offences punishable under the NDPS Act, 1985, the version given in the FIR usually was that an accused was apprehended either on secret information, or per chance, with intoxicant substance (powders/tablets etc.) recovered from his/her pocket upon his/her personal search.

After the judgments of the Supreme Court to the effect that upon a person simply being apprised of his right to be searched by a gazetted officer but who is not produced before a gazetted officer for personal search, would not be sufficient compliance of Section 50 of the Act of 1985, the version given in the FIRs has in almost all cases changed, with such version (almost across the State of Punjab), being that upon either secret information received or on patrolling parties apprehending some body on suspicion, such person was "carrying a polythene bag which he/she threw on the road upon seeing the police party".

Such a complete turn about in almost every single case obviously raises an eye brow of suspicion as to the actual authenticity of the same story in almost each FIR, and for that reason, as also for the reason that in some cases video recordings/telephone call records were produced before this court to show that the police party actually picked up the accused from a place wholly different to that shown in the FIR, this court had asked the DGPs of the States of Punjab and Haryana to state on affidavit as to why directions should not be given by this court that police officials apprehending the accused should be wearing body cameras to support the version given in the FIR, for all courts to at least *prima facie* believe the version given in the FIR, rather than to

disbelieve it in view of the almost identical stories given in most of the FIRs (as described herein above), with it, to repeat, found by this court upon call detail records being called for or from video recordings presented before this court, of people being picked up from different places rather than those shown in the FIR.

Very strangely, the DGPs had opposed any directions for body cameras to be used by the police, on the ground that the matter was already pending before the Supreme Court.

Whereas for that reason, this court thereafter desisted from passing any further orders, yet it is extremely surprising that the police would resist such a direction, because if the versions given in the FIRs are actually correct, such a direction would be welcomed, or in fact voluntarily they would agree to wear body cameras to support the version given in the FIR, i.e. to show that what is stated in the FIR is correct even as per 'visible evidence' in the form of camera recordings.

Consequently, the DGP, Punjab, is directed to now file another affidavit as to why the State of Punjab is resisting directions for body cameras to be worn by those apprehending the accused, especially when, as observed herein above, entire versions in the FIRs have got changed from one particular version (of contraband being recovered from the pocket of an accused) to an accused carrying a polythene bag which he/she threw on the road upon seeing the police party.

Adjourned to 25.8.2021.”

As regards the second part of the order, the affidavit of the DGP, Punjab, dated 24.08.2021, has already been taken on record, with learned State counsel again submitting that the stand taken by the DGP is the same as taken in the context of other petitions where a similar issue had been raised by this court, as regards video recording and wearing of body cameras by police personnel; that is to say that the issue is already subjudice before the Supreme Court.

That being so, and with learned State counsel also further submitting, on instructions, that the petitioner in this petition has joined investigation and his custodial interrogation is not required, this petition has been rendered infructuous and is disposed of as such.

However, if the petitioners' custodial interrogation is required at any stage hereinafter, in the context of the FIR in question, he would be given 10 days notice before arrest, duly shown to be served upon him.

CRWP-1909-2021

Adjourned to 29.09.2021.

To be heard alongwith CRM-M-38892-2019.

(A photocopy of this order be placed on the file of the connected case).

September 22, 2021

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**