

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22774-2020(O & M)

Date of Decision:07.10.2021

Jatinder Kumar

...Petitioner

Versus

State of and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr.RanaHarjasdeep Singh, DAG Punjab

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

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

CRM-2866-2021

Vide this application, the applicant-petitioner seeks to place on record a copy of the *challan*(Annexure P-12) and the call records annexed with the *challan* (Annexure P-13).

The application is allowed subject to all just exceptions. Annexures P-12 and P-13 are taken on record.

CRM-M-22774-2020

Vide this petition, the petitioner seeks entrustment of the investigation in case FIR No.151 dated 31.05.2020, registered at Police Station Bhawanigarh, District Sangrur, for the alleged commission of offences punishable under the provisions of Sections 15 and 29 of the NDPS Act, to an independent agency like the Central Bureau of Investigation (CBI), with the CBI having been impleaded as respondent no.5 in this petition.

Various orders having been passed during the course of hearing, on 04.10.2021 a detailed order was passed by this Court, also referring to non-disposal of contraband as is required to be disposed of (once it is not required as case property in any case).

The part relevant in that order, to this petition, is reproduced herein:

“.....CRM-M-22774 of 2020 being a petition by which the petitioner is seeking directions for investigation by an independent agency, and as already noticed in the previous orders passed, his contention having been that the petitioner was actually apprehended on 30.05.2020 but shown to be apprehended on secret information received on 31.05.2020, with his mobilephone location also coming in District Sangrur on 30.05.2020 itself, though such secret information was allegedly to the effect that he was bringing contraband on that day from Madhya Pradesh, and with all CCTV cameras as the petitioner had referred to, including those at the police station and the camera installed under the MPLAD scheme etc., all having very ‘conveniently become dysfunctional’ at the time in question, in the aforesaid circumstances, it is considered appropriate to first call upon the Central Bureau Investigation and then possibly to hand over investigation to them, with the said Bureau already being respondent no.5 in the petition, and with service being complete upon all respondents, as per the report of the Registry dated 04.12.2020.

*Consequently, notice be now issued to Sh. Sumeet Goel, Senior Standing Counsel for the said Bureau, returnable on **07.10.2021**, when a similar petition has also been fixed for hearing (with regard to investigation to be handed over to the CBI).*

To be heard along with CRM-M-16585 of 2021.

Interim order to continue.....”

Today, though, upon directions issued in CRM-12547-2021, investigation in that case has already been handed over to the CBI, and otherwise this Court was inclined to hand over investigation in this case also; yet, with the learned Special Public Prosecutor, CBI, having submitted that before handing it over, the matter be referred to a senior officer of the State police itself, learned State counsel again points to the affidavit filed by the Inspector General of Police,

Patiala Range, dated 14.01.2021, from which he points to the fact that the petitioner was found to have been (as per the investigating agency) in contact with a large number of persons in Madhya Pradesh, on different dates between 01.03.2020 and 31.05.2020, and that there were also found to be large transactions of money to the tune of Rs.35-40 lakhs in the accounts of unknown persons based in Madhya Pradesh/Rajasthan, which would seem to tally (as per the Inspector General) with the tower locations of the mobile phones that the petitioner is alleged to have been using, such tower locations being of Madhya Pradesh (again as contended by the Inspector General).

Learned counsel for the petitioner submits that in fact the petitioner is a commission agent who also has a rice sheller and therefore has dealings with other businessmen in different States, with him having filed income tax returns by which he can justify the aforesaid transactions; and further, that he had in fact sold combine harvesters in Madhya Pradesh during the period in question.

However, in my opinion, upon reconsidering the affidavit filed by the Inspector General of Police, the petitioner would best be left at liberty to lead his evidence before the trial Court, including the factum of the alleged outage of electricity (as stated by the IGP), leading to possible failure of CCTV cameras installed in both, the Police Station, Bhawanigarh, as also at a particular point from where the petitioner is alleged to have been 'picked up' one day prior to the date shown in the FIR.

It is also to be noticed that learned counsel for the petitioner has pointed out that electricity outage is shown to have occurred between 7.30 pm and 9.10 pm, whereas actually the petitioner was picked up at 9.30 (as contended) and therefore as to why the CCTV footage of the MPLAD camera at 9.30 was not available, would be completely un-understandable and consequently (he contends),

it is only a cover up by the police, of the petitioner having been actually arrested on 30.05.2020 instead of 31.05.2020. Learned counsel for the State however submits that in fact the cameras in the police station did not go offline due to some electricity outage but due to some fault in the cameras themselves, as duly recorded in the DDR of 05.06.2020, (i.e. six days later).

Simply, at this stage, looking at what the learned State counsel has pointed to from the affidavit of IGP, as regards the petitioner being in touch with different persons in Madhya Pradesh and Rajasthan and there being allegedly money transactions which may not have been explained, with the *challan* under Section 173 of the Cr.P.C having been submitted before the trial Court, the petitioner as also the prosecution would naturally lead evidence for consideration of the trial court, after which the innocence or guilt of the petitioner would obviously be arrived at by that court.

Consequently, this petition is dismissed with the interim order passed directing the trial Court to adjourn the matter to a date beyond that given by this court, is vacated. Naturally, the trial Court would now proceed with the trial as per process and come to its findings on the basis of the evidence led before it.

It is clarified that all observations made by this Court in this petition, as well as in the connected petitions, would be taken to be only in context of such petitions and naturally the trial Court would proceed with the trial wholly on the basis of evidence led before it.

However, in view of the fact that this Court had already directed, on 04.10.2021, the Additional Chief Secretary, Home Affairs, Punjab, to file an affidavit in terms of that order (as regards the disposal of contraband), such affidavit be now filed.

For that purpose the case file be put up for hearing on 17.11.2021

To be shown in the urgent motion list.

07.10.2021

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**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No