

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

CRM-M No.38515 of 2021

Date of Decision: November 11, 2021

Ikhlas @ Khalasi

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Munfaid Khan, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

Case heard by way of video conferencing.

On 16.09.2021, the following order has been passed by this

Court:-

“Case heard by way of video conferencing.

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.324, dated 20.08.2021, having been registered at Police Station Ferozepur Jhirka, District Nuh, alleging therein the commission of offences punishable under Sections 3/13(2), 8/13(3) and 17 of the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015.

Learned counsel for the petitioner submits that though in the FIR it is stated that upon secret information received by the police, his house was raided, and the petitioner as also another person (stated by the investigating agency to be Umar son of Mamman), were found to be cutting up beef slices, with them having thereafter run away from the spot but with the beef

recovered from the petitioners' house, however, the petitioner was actually not present and the beef was actually not recovered from the house, with there being no photography/videography of either the petitioner and his alleged co-accused being in the process of cutting beef, or even with regard to any recovery made from the house of the petitioner, and therefore, simply on a statement made by a police official, to the aforesaid effect, the petitioner cannot be accused of having committed a crime that he did not commit (as contended).

Notice of motion, with Mr. Neeraj Poswal, learned AAG, Haryana, accepting notice on behalf of the respondent State, on the asking of the Court.

A copy of the petition be emailed to him today positively by the learned counsel for the petitioner.

The Superintendent of Police, Nuh, is directed to file an affidavit, as to why, simply to give authenticity and have genuine evidence of any said raids conducted, videography/photographs are not taken at the spot, with this court instead expected to believe a police official at face value that beef/any other material was actually recovered from a particular place, simply on a statement made to that effect by such police official, whereas very unfortunately, in cases especially involving the NDPS Act, this court has time and again come across videography submitted by accused, showing that they were not even present at that spot from which they were actually shown to have been picked up from; and were actually picked up from their homes at a different time. Hence, with great regret, this court has to observe that the statement of a police official at face value may not be believable, even though it cannot be wholly discarded as untrue at face value. Consequently, the SP, Nuh, shall state on affidavit, as to why, especially when secret information has already been received,

videography/photography cannot be done at the spot, with almost every single police official now having a smart phone to do the needful, even in the absence of any photographer/cameraman etc. who possibly may not have been joined due to paucity of time etc.

Adjourned to 11.11.2021.

In the meanwhile, the petitioner is directed to join investigation by first surrendering before the Illaqa Magistrate concerned within one week from today, and upon his doing so, the Illaqa Magistrate would summon the arresting officer and direct him to join him in investigation and in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaqa Magistrate. He shall abide by the conditions stipulated in Section 438(2) of the Cr.P.C.

It is directed that the petitioner would hand over his mobile phone to the investigating officer in the presence of the Illaqa Magistrate concerned, failing which he shall not be admitted to interim bail.”

Pursuant thereto, a reply has been filed by the Superintendent of Police, Nuh, dated 11.10.2021, which is ordered to be taken on record.

Learned counsel for the State points out therefrom that in fact photographs were not taken on the scene of crime and the officials concerned have been issued show cause notices for that lapse.

However, the Superintendent of Police, Nuh, has further stated that videography/photography is not sometimes possible because at times the local population opposes any raid on "cow smugglers", with stone pelting also resorted to by them, though it has then been stated that the observations of the court would be followed by the police in future also.

Whereas the stand taken by the Superintendent of Police, Nuh, is to be obviously appreciated, however, what this court needs to observe in that context is that if stone pelting etc. is resorted to, then possibly it would be difficult to even recover the beef as is stated to have been recovered in the present case.

Hence, if such beef was recovered, I do not see why videography could not have been done/photographs could not have been taken, though of course the Superintendent of Police has already stated that show cause notices have been issued to the officials concerned for not doing so.

As regards the merits of the case, the SP has virtually reiterated the facts as given in the FIR and consequently, without making any final comment on the merits of the case, the petition is allowed, with the order admitting the petitioner to interim bail, dated 16.09.2021, made absolute, on the same terms and conditions.

It is clarified that all observations made by this court in the context of this petition are wholly 'relatable' to a petition filed under the provisions of Section 438 of the Cr. P.C; and investigation would continue as per the evidence gathered and if the matter goes to the trial, the trial court would also come to its own conclusion on the basis of such evidence led before it.

November 11, 2021

sarita

(AMOL RATTAN SINGH)**JUDGE****Whether reasoned/speaking: Yes****Whether reportable: Yes**