

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-7700-2020(O&M)
Date of decision : 06.09.2022

Sohan Singh

... Petitioner

Versus

The State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Sanjeev Pathak, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

CRM-33027-2022

This is an application under Section 482 Cr.P.C. to place on record documents as Annexures P-3 to P-15.

The application is allowed and Annexures P-3 to P-15 are taken on record subject to all just exceptions.

CRM-M-7700-2020

This is a petition under Section 482 Cr.P.C. for quashing of FIR no.139 dated 02.09.2018 registered under Sections 3(1), 4, 5(1)(a), 6(a), 18 and 23 of the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1995 and Sections 420, 120-B IPC at Police Station Fatehgarh Sahib, District Fatehgarh Sahib and all the other consequential proceedings arising therefrom.

On 16.08.2022 the present petition was adjourned for

order:-

“On a pointed query raised by this Court with respect to the stage of the case, learned counsel for the petitioner has informed the Court that an application for discharge has been filed by the petitioner before the trial Court.

Learned counsel for the petitioner is directed to place on record all the zimni orders of the trial Court as well as the application for discharge.

Adjourned to 06.09.2022.

(VIKAS BAHL)
JUDGE

August 17, 2022.”

In pursuance of the said order, the petitioner has filed CRM-33027-2022 for placing on record zimni orders as well as discharge application. A perusal of the discharge application (Annexure P-3) would show that the issues raised in the present petition for quashing of the FIR have been raised in the said discharge application also. On a pointed query raised by this Court as to whether there are any additional arguments raised in the present petition, other than the pleas taken in the said discharge application, learned counsel for the petitioner has answered in the negative. A perusal of paragraph 5 of the said discharge application would show that it has been specifically mentioned by the petitioner in the discharge application that besides the present FIR, a complaint as per the provisions of PNDT Act has also been filed. The State has filed reply to the said discharge application and in the said reply, it has been stated in paragraph 3 that the complaint titled as “State vs. Rajinder Kumar and others”, COMA no.73/2018 is also pending in the Court and on 11.01.2022, the Court had ordered that the complaint is to be tried together with the challan as the proceedings of 210 Cr.P.C. The relevant portion of the said reply is

“3. That it is very much necessary to mention here that the complaint titled as “State vs. Rajinder Kumar and others”, COMA no.73/2018 is also pending in the Court and on 11.01.2022, the Hon'ble Court ordered that complaint is to be tried together with the challan as the proceedings of 210 Cr.P.C.

4. That the offences under PNDT Act 1994 are serious in nature and accused persons are indulging in conducting the Sex determination test so the application of accused Sohan Singh is liable to be dismissed.

It is, therefore, prayed that application of the accused Sohan Singh may kindly be dismissed in the interest of justice.

Date:-9/5/22.

Submitted by

*(Navjeet Kaur)
APP, FGS.”*

A perusal of the zimni orders would show that on 25.10.2021, ASI Baljinder Singh, IO had suffered a statement that a criminal complaint is pending against the accused in the Court of Chief Judicial Magistrate, Fatehgarh Sahib and accordingly, a prayer was made for transferring the case to the Court of the Chief Judicial Magistrate, Fatehgarh Sahib so that the proceedings of present case and that complaint could be taken up together. The Judicial Magistrate Ist Class, after considering the fact that cognizance of the case is to be taken only on complaint in cases under PNDT, and as per the Investigating Officer, the complaint was pending before the Chief Judicial Magistrate, Fatehgarh Sahib whereas the original documents were annexed along with the FIR and thus, in the interest of justice, had referred the case to the Chief Judicial Magistrate, Fatehgarh Sahib for transferring the same to the competent court of jurisdiction for 01.11.2021. The case was then transferred to the court of the Chief Judicial Magistrate, Fatehgarh Sahib as is apparent from the order dated 01.11.2022 and vide order dated 11.01.2021, the Chief Judicial Magistrate, Fatehgarh

transferred to the Court of the undersigned therein so that the same could be tried along with the concerned complaint. The fact that the application for discharge has been filed by the petitioner was also taken note of. On 25.05.2022 co-accused of the petitioner had filed an application for exemption from personal appearance and thereafter on 04.03.2022, the present petitioner had filed an application for exemption from personal appearance and the matter was adjourned. After the reply was filed by the State to the discharge application, the matter was fixed for 08.06.2022 for arguments on the same but however, a request for adjournment was made and the matter was adjourned to 11.07.2022 and thereafter again on the request of learned counsel for the accused, the case was adjourned to 02.08.2022 on 11.07.2022 and on 02.08.2022, the arguments were not advanced and the matter was adjourned to 17.08.2022 and thereafter also, the case was adjourned and now the case is fixed for 26.09.2022 for arguments on the discharge application filed by the petitioner. The aspect with respect to there being both, the complaint as well as the FIR, has come about only upon a perusal of the reply and zimni orders. The zimni orders dated 25.10.2021, 01.11.2021, 11.01.2022 as well as order dated 02.08.2022 are reproduced hereinbelow:-

*“Present: Sh. Sikander Tuteja, APP for the State.
Accused on bail with counsel.*

Accused have appeared today. Today ASI Baljinder Singh IO has suffered statement that a criminal complaint is pending against the present accused in the court of Ld. Chief Judicial Magistrate Fatehgarh Sahib and document of original complaint are attached with that complaint. Due to this reason present case be transferred to the court of Ld. Chief Judicial Magistrate Fatehgarh Sahib so that proceedings of present case and that complaint should be initiated together.

In view of statement of IO Baljinder Singh, as the cognizance of the case to be taken only on complaint in cases under PNDT and as per statement of IO complaint pending in the court of Ld. Chief Judicial Magistrate, Fatehgarh Sahib whereas all the original documents have been annexed in the present FIR and in the interest of justice, present case is referred to the court of Ld. Chief Judicial Magistrate Fatehgarh Sahib for transferring the same to the competent court of jurisdiction for 01.11.2021. Accused are directed to appear before the court of Ld. Chief Judicial Magistrate Fatehgarh Sahib for 01.11.2021. Ahlmad of this court is directed to send this case to the court of Ld. Chief Judicial Magistrate Fatehgarh Sahib complete in all respect well before the date fixed.

Date of order: 25.10.2021

*(Harpreet Kaur)PCS
JMIC/FGSUID:PB0312*

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*Present: Ms. Navjeet Kaur, Ld. APP for the State.
All the accused on bail with Counsel.*

The present case has been received by way of transfer. It be registered. On the basis of request made by the Ld. Counsel of accused, the case is adjourned to 11.01.2022 for consideration on charge.

Pronounced: 01.11.2021.

*(Mahesh Grover),
Chief Judicial Magistrate,
Fatehgarh Sahib*

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*Present: Sh. AS Gurm, APP for the State.
All accused on bail with Sh. Gaurav Arora, Sh. JS
Pessi and Sh. GS Cheema, Advocates.*

In the present case, a reference has been received from the Court of Smt. Harpreet Kaur, learned JMIC, Fatehgarh Sahib with a request that complaint pertaining to this case is pending in the Court of undersigned. Heard. In view of the request, the reference is accepted and the said challan bearing No.CHI/430/2021 is ordered to be transferred to the court of undersigned so as to try it alongwith the concerned complaint

case. Necessary intimation be sent to the transferor court. Challan be registered.

In the present case an application for discharging him has been filed by one of accused Sohan Singh, although there is no mention of the same in the concerned zimni orders. Copy supplied today. Now reply to the said application be filed on behalf of State/ complainant for 04.03.2022.

*Pronounced: (Mahesh Grover)
ACJ(SD)-cum-CJM,
Fatehgarh Sahib/UID No.PB0243*

Date of Order: 11.01.2022.

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*Present- Sh. AS Gurm APP for the State.
All accused on bail with Sh. Gourav Arora, JS
Passi, GS Cheema and Sh Sanjiv Chopra
Advocates.*

Arguments on the application for discharging the accused Sohan Singh not advanced today. On request, case is adjourned to 17.08.2022 for arguments on the application for discharging the above said accused.

*Date of Order: 02.08.2022 (Dipti Goyal)
CJM/FGS
UID NO. PB00300"*

Keeping in view the above said facts and circumstances and also the fact that the pleas which have been raised in the present petition have also been taken in the discharge application, which is at the stage of final arguments, whereas no notice has been issued in the present case, this Court deems it appropriate to dispose of the present petition with the following directions:-

- i) The trial Court is directed to decide the application of the petitioner for discharge as expeditiously as possible.
- ii) The counsel for the accused as well as counsel for the State before the the trial Court are also directed to fully assist the Court in disposing of the application for discharge as

expeditiously as possible.

iii)After the order is passed on the discharge application, it would be open to either of the parties to challenge the same, in accordance with law. The present order would not come in the way of the petitioner to challenge the said order, in case the need to challenge the same arises.

With the above said observations, the present petition is disposed of.

(VIKAS BAHL)
JUDGE

September 06, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No