

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

Criminal Misc. No.M-16126 of 2015(O&M)

Date of Decision: July 15, 2022

Tarlochan Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Amandeep Singh Rai, Advocate for the petitioner.

Mr.B.S.Sewak, Addl.AG, Punjab.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C seeking to quash FIR No.318 dated 24.06.1978 under Section 9/1/78 of the Opium Act, registered at Police Station Sadar Ludhiana, District Ludhiana along with all subsequent proceedings arising therefrom.

The case of the petitioner is that he has been falsely involved in the case for alleged recovery of 2 Kg of opium. He was released on bail and thereafter he was regularly appearing before the Ld.Trial Court. However, the challan was not presented for a long time and the petitioner was told that his appearance is not required till the presentation of the challan and that the Investigating Agency will take a long time in filing the same. Thereafter, the petitioner did not receive any information about presentation of Challan nor has been declared proclaimed offender. He has been residing at the same address since then. The Police seems to have got him declared as Proclaimed Offender in the year 1979 and the petitioner came to know about his proclamation in the end of the year 1999 when the Police raided his

house. The petitioner applied for anticipatory bail, which relief was not granted to him and he surrendered before the Ld.Trial Court. He was again released on bail and since then he has been regularly attending the Court. The Ld. Trial Court summoned the original file for 27.05.2000 and thereafter, the matter was adjourned from time to time. On 05.12.2003, a report was received in the Trial Court that the record was destroyed. The matter was brought to the notice of the Ld. District and Sessions Judge, Ludhiana, who ordered an enquiry into the loss of documents and for its reconstruction. Vide order dated 04.02.2004, the Ld. Trial Court summoned the Investigating Officer for 28.02.2004 with the Police file. Thereafter, the matter was adjourned time and again, but the IO failed to produce the record. Unfortunately, the IO expired and vide order dated 28.10.2004, the Naib Court was directed to bring the Police file. However, despite various dates, the Police failed to produce the documents before the Ld. Trial Court.

Ld. counsel for the petitioner has argued that even after about 44 years of registration of the FIR, the trial has not commenced against the petitioner. The inordinate delay is attributable to the Prosecution, which failed to produce the any record of the case.

Reply has been filed by respondent – State by way of affidavit of Gurpreet Kaur Purewal, PPS, Assistant Commissioner of Police (Gill – Rural), Ludhiana. It is stated that challan was presented on 12.10.1978 before the Court. However, during trial, the petitioner absconded and on 17.11.1979 he was declared Proclaimed Offender by the Court. After about 21 years, on 17.02.2000 the petitioner surrendered before the Court. The

Police file was not traceable and in this regard an enquiry was conducted, wherein, it was found that ASI Dilbagh Singh (now Inspector) who formally arrested the petitioner on 23.02.2000 was required to submit supplementary challan in the case, but he failed to do so. ASI Dilbagh Singh is found responsible for the loss of the Police file. After completion of departmental proceedings, further appropriate action will be taken against him. The reply further states that as the case pertains to the year 1978. It is not possible for the Police to reconstruct the case file. The reply concludes by saying that there is no other option with the Police, but to agree with the petitioner to quash the FIR.

In *Santosh De v. Archana Guha, 1994 Supp (3) SCC 735*, the accused were charged on 20.12.1976 under Sections 147, 148, 149, 448, 307 and 324 of the Penal Code, 1860 and under Section 27 of the Arms Act. It was only in 1980 that the case was committed to the Court of Sessions and the trial commenced. By 1986, only two witnesses had been examined when the accused filed a criminal writ petition in the Patna High Court for quashing of the trial on account of delay and the pendency of the trial for a period of more than seven years, which was allowed. Affirming the High Court order, the Hon'ble Supreme Court observed:

“13. We are not satisfied that there are any valid grounds for interference with the order of the High Court. The most glaring circumstance in the case is the delay in commencing the trial. The case was committed to sessions court on 15-7-1974 and the charges came to be framed by the sessions court only on 13-4-1983 i.e. after a lapse of about eight years. The appellant is not in a position to explain the reasons for this delay. In the order under appeal, the High Court has stated that this delay is entirely on account of the default of the prosecution. This is not a case of

what is called “systemic delays” — as explained in Abdul Rehman Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] . In our opinion, this unexplained delay of eight years in commencing the trial, by itself, infringes the right of the accused to speedy trial. In the absence of any material to the contrary, we accept the finding of the High Court that this delay of eight years is entirely and exclusively on account of the default of the prosecution. Once that is so there is no occasion for interference in this appeal. It is accordingly dismissed.”

In the present case, there is delay of about 44 years. The offence under Section 9 of the Opium Act is punishable with imprisonment which may extend to three years, with or without fine. It is the positive case of the prosecuting agency that no record of the case is available with the Police. The sword of a criminal case has been hanging on the petitioner during all these years. The delay is attributable to the Police only and it is also evident from the enquiry held by the Police Department.

In the circumstances, the petition is allowed. The FIR No.318 dated 24.06.1978 under Section 9/1/78 of the Opium Act, registered at Police Station Sadar Ludhiana, District Ludhiana along with all subsequent proceedings arising therefrom, is quashed.

July 15, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No