

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRM-M-3867-2021 (O&M)
Date of Decision: January 31, 2022

Sachin Chugh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CRM-M-14748-2020 (O&M)

Karan Dhingra

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Preetinder Singh Ahluwalia, Advocate,
for the petitioner (in CRM-M-14748-2020).Mr. P.K.S. Phoolka, Advocate,
for the petitioner (in CRM-M-3867-2021).

Mr. M.S. Nagra, A.A.G., Punjab.

Mr. Puja Dhingra, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By these petitions, the petitioners seek the concession of 'pre-arrest bail', upon FIR No. 216 having been registered at Police Station Kotwali, District Bathinda, on 14.06.2014, alleging therein the commission of offences punishable under the provisions of Sections 354/292(A)/201 of the IPC and Section 67-A of the Information and Technology Act, 2000.

On 19.03.2021, the following order had been passed by this court:-

“Pursuant to the order dated 10.03.2021, Mr. Jaskaran Singh, IGP, Bathinda Range, is present in court through video conferencing and has submitted that after the previous order was passed, the matter has been gone into more detail and it has been found that as regards the mobile phone carrying IMEI no.351797068367300, it was purchased against 'a cash invoice' on 14.03.2014, with the name of the purchaser not having been given by the retailer. It is stated to be a basic Samsung mobile phone and not a 'smart phone'.

However, further investigation in that regard is being conducted.

As regards the mobile phone containing IMEI no. 911339804396360, it was found to be a Micromax mobile phone but with the manufacturing company itself having shut down, tracing out the retail seller has become a little difficult but the police is still investigating in that regard.

Adjourned to 20.05.2021 for the IGP, Bathinda Range, to file another status report with regard to the investigation carried out in the meanwhile.

He has made a specific request that the petitioner be directed to hand over all electronic devices that he was using for the period in question for it to be determined as to whether any such

obscene messages, photographs etc. were transferred to any other such device from the mobile or uploaded from such device to the mobile phone from which they were sent on to the complainant.

Consequently, the petitioner, upon appearing before the SIT again, shall provide the list of all electronic devices that he was using, including laptops, i-pads, desktop computers and mobile phones etc. (with SIM card numbers), that he had used from April to July, 2014; and shall also hand over all such devices that he already has since that period, whether they are currently being used or not.

Naturally, whether or not the interim order should be vacated on the next date of hearing may depend upon his cooperation to the aforesaid effect, because even if he claims that he has no such devices with him, he will be required to give the details of all those devices that he used at that period of time and preferably give all those devices also, because even though mobile phones may not be available after such a long time, normally i-pads/laptops/desktop computers are available even after seven years.

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Learned counsel for the petitioner in this case, i.e. Sachin Chugh, submits that the said petitioner may also be allowed to join investigation under protection, with him obviously to cooperate with the investigating team as regards all electronic devices etc. that are required from him, as also with

regard to any other material that he may be asked to provide.

Though learned counsel for the complainant opposes that, upon query to the IGP, Bathinda Range, he submits that since the man has not been arrested so far as he has never been available at home with his father having in fact lodged a report to the effect that he is missing/ is no longer living there, he may be asked to join investigation once under protection, after which of course whether or not such interim protection should continue would depend on whether he cooperates with the investigating agency or not.

That being so, the petitioner in this petition, i.e. Sachin Chugh, is directed to join investigation within one week and if, upon him so joining, he is sought to be arrested, he shall be released on interim bail, upon his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Duty Magistrate, till the next date of hearing. He shall also comply with all conditions stipulated in Section 438(2) of the Cr.P.C.

If the arresting officer does not 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.

It is made clear that if he does not provide all materials as is asked for from him by the investigating agency, including all electronic devices as were used by him for the period from April to July, 2014 naturally the interim order would be liable to be vacated on the next date of hearing itself.

A photocopy of this order be placed on the file of another connected case.”

Thereafter, on 16.09.2021, the following order was passed:-

“Case heard by way of video conferencing.

Pursuant to a detailed order passed on 19.03.2021, when the IGP, Bathinda Range was present in court upon directions issued to him for that purpose (via video conference), an affidavit dated 04.09.2021 has been filed by the said officer, giving therein very detailed information about the investigating carried out. Eventually, it has been stated in paragraph 15 of the said affidavit as follows:-

“15. From the investigation conducted till now, the following facts have emerged out:

- i. Both the accused petitioners have denied using laptop, ipad, tablet or desktop computers for the period from March to May 2014.*
- ii. Both the accused petitioners have been using emails, they have provided the respective email Ids.*
- iii. While one accused namely Sachin Chugh has stated that he was having mobile number 90412-*

77142 and 9876320988 and has disposed of his earlier mobile phone of Nokia Lumia make as it was suffering from recurring defects and closed his Mobile number 90412-77142. Accused Karan Dingra has stated that he has been changing his mobile phones as per change in technology. He has also stated that the SIM having number 99880-70470 was closed by him after registration of present FIR against him.

iv. Both the accused persons have neither provided any list of all electronic devices that they were using including laptops, ipads, desktop computes etc. for the period March, April and May 2014 nor handed over any of the above device including the mobile phones sets used by them.”

In view of the above, the IGP will now file a very short affidavit, after obviously assessing the matter himself in consultation with the SIT, whether the custodial interrogation of either of the petitioners, or both of them, is required; and if so for what specific purpose.

It is made clear at this stage itself that if, after a very detailed investigation carried out, the IGP is still of the opinion that the custodial interrogation is required, this court may be inclined to dismiss these petitions on the next date of hearing itself.

If on the other hand it is not required, obviously this court may not direct their arrest even in terms of the judgment of the Supreme Court in M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649.

Adjourned to 05.10.2021 for the affidavit of the IGP to be filed before that date.

Interim orders to continue, till then in both the petitions.

The affidavits filed by the IGP, dated 20.01.2021 and 14.11.2020, not having been taken on record earlier inadvertently, they are ordered to be taken on record now, along with the last affidavit dated 04.09.2021.

It is to be noticed of course that Mr. Ahluwalia, as also Ms. Dhingra, have expressed their reservations on the order passed by this court today, as (in either situation) one of them would wish to address arguments before this court as to why the interim order should be continued, or should not be continued.

Obviously this court would consider their arguments.

A copy of the affidavit to be filed by the IGP, be supplied to the counsel for the petitioners, as also to the counsel for the complainant, in advance.

To be shown in the urgent motion list. The detailed investigation carried out so far, at least after the IGP intervened, needs to be appreciated.

A copy of this order be placed on the file of the other connected matters too.”

On 05.10.2021, the following order was passed:-

“Case heard by way of video conferencing.

On 16.09.2021, this court, after reproducing para 15 of the affidavit of the IGP, Bathinda Range, dated 19.03.2021, had directed him to file another short affidavit, stating therein as to whether (in view of what was contained in the affidavit dated 19.03.2021), as to whether the custodial interrogation of the petitioner is required or not.

An affidavit dated 03.10.2021 is stated to have been executed by the said officer, with a copy thereof received by the learned counsel for the petitioner, as also by the complainant, but with that affidavit not being on record on the case file.

However, learned counsel for the petitioner has read out paragraph 5 thereof, to the effect that “looking at the facts on record and the attitude of the petitioners”, their custodial interrogation is not required.

The affidavit be placed on record by the respondent State (with the learned State counsel not able to address arguments properly in any case, there being some network problem with him).

Adjourned to 12.11.2021, with the learned counsel for the complainant to make submissions that she wishes to, in the light of the aforesaid affidavit, as also keeping in view the judgment of the Supreme Court in M.C. Abraham v. State of Maharashtra, (2003) 2 SCC 649, and any other law that she wishes to cite to distinguish that judgment, and on the merits of the matter.

A copy of this order be placed on the file of the other connected matters too.”

The turn of the case having come up for effective hearing today only thereafter, an affidavit of the Inspector General of Police, Bathinda Range, dated 03.10.2021 (in CRM-M-14748-2020) is seen to have been filed, which is ordered to be taken on record.

Paragraphs 3 to 5 of the said affidavit are reproduced hereinbelow:-

“3. That although the accused petitioners have appeared before the Special Investigation Team, but have not either provided the list of electronic devices that they were using in the relevant period, not handed over any of these to the Special Investigation Team.

4. That as per record of investigation, accused petitioners have consistently been causing disappearance of or destroying the evidence. On account of this offence under Section 201 of the IPC has been added in the FIR, registered against him.

5. That the deponent in consultation with the Special Investigation Team, has come to the view that keeping in view the facts on record and attitude of accused petitioners, custodial investigation of the accused petitioners is not likely to yield any result, other than the present one and as such, shall be a futile exercise. Therefore, in the present circumstances, custodial interrogation of accused petitioners is not required. However as the investigation in this case is still continuing, the Special Investigation Team shall have the right to call accused petitioners to join

investigation as and when required, till the submission of final investigation report under Section 173 Cr.P.C.”

In view of the above, in my opinion, these petitions have been rendered infructuous and need to be disposed of as such.

However, Mr. Ahluwalia, learned counsel for the petitioner in CRM-M-14748-2020, submits that if the petitioners are sought to be arrested hereinafter, they should be given due notice under the provisions of Section 41-A of the Cr.P.C., which stipulates that where the arrest of a person is not required under the provisions of Section 41 (1), a notice directing such person (as described in the said provision), would be issued to appear before the police at a specified time and place, upon which such person shall be bound to comply with the terms of the notice and that when he continues to comply with the said terms, he shall not be arrested in respect of the offence referred to in the notice, unless the police officer record reasons as to why he still needs to be arrested.

Learned counsel for the petitioners further submit that the offences that the petitioners-accused are alleged to have committed, all being such as carry a punishment of less than 07 years, there would be no reason to subsequently arrest them, especially when the IGP has stated on affidavit that their custodial interrogation being futile, it is not required.

In that context, it is also to be noticed that clauses (a) and (b) of Section 41 (1) of the Cr.P.C. postulate that a police officer may, without an order from a Magistrate and without a warrant, arrest any person against whom credible information has been received or a reasonable complaint has been made that he has committed an offence punishable for a term of up-to

07 years, on the conditions specified thereafter in the said section being satisfied (including that if such arrest is required for proper investigation of the offence).

Ms. Dhingra, learned counsel for the complainant, today relies upon an order of the Supreme Court in Sanatan Pandey vs. State of Uttar Pradesh and another Law Finder Doc ID# 1893527, from which she specifically points to the following (reference paragraph 3 of the order):-

“.....Therefore, this is not a fit case to grant anticipatory bail to the petitioner. The court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr.P.C.1973 has been issued.”

She next points to photocopies of the transcripts of certain text messages that she has also 'sent' to this court today, stated to have been sent by the uncle of petitioner Sachin Chugh to the IGP Hisar Range (Haryana), with her further submitting that the said message also refers to a very senior IAS officer of Haryana.

The contention therefore is that the petitioners being very influential persons, the police has not earnestly investigated the matter right from the initial stage till now, and therefore no indulgence should be granted to the petitioners by this court.

Next, she submits that this being the 2nd such petition filed by Sachin Chugh, with the first one filed by him (also seeking anticipatory bail under the provisions of Section 438 of the Cr.P.C.), having been dismissed

by this court on 07.07.2020 (CRM-M-16401-2020), in any case this petition cannot be entertained by this court and should have been dismissed at the threshold.

She also submits that the complainant has filed a counter-affidavit dated 25.01.2022, to the affidavit of the IGP Bathinda Range, dated 03.10.2021, annexing therewith a copy of an email stated to have been sent by the IGP Bathinda Range to the email id of the accused.

In the context of her argument on a 2nd petition not being maintainable, it is to be noticed that when CRM-M-3867-2021 filed by petitioner Sachin Chugh first came up for actual hearing on 10.03.2021, this court had made it absolutely clear that there was no interim order operating in favour of that petitioner.

Thereafter, with the IGP Bathinda Range having been summoned and he having appeared, as recorded in the order dated 19.03.2021, and with him having specifically stated that the petitioner may in fact be asked to join investigation and thereafter whether he cooperates or not would be informed to this court (and accordingly whether the interim order should continue would be decided), that petitioner had also be ordered to be admitted to interim bail upon joining investigation if he was sought to be arrested.

Thus, having considered the matter hereinabove, it is first to be noticed by this court that the IGP in his affidavit dated 03.10.2021 has very categorically stated in paragraphs 3 and 4 that in fact neither of the petitioners is actually cooperating in the investigation.

Thereafter he has stated that, despite that, their custodial interrogation is not likely to yield any result and would be a futile exercise and consequently, their custodial interrogation is not required (as reproduced earlier in this order).

In that context the judgment of the Supreme Court in M.C. Abraham and another vs. State of Maharashtra and others (2003) 2 SCC 649, needs to be referred to, wherein it was held by the Supreme Court as follows:-

“In the instant case the appellants had not been arrested. It appears that the result of the investigation showed that no amount had been defalcated. We are here not concerned with the correctness of the conclusion that the investigating officer may have reached. What is, however, significant is that the investigating officer did not consider it necessary, having regard to all the facts and circumstances of the case, to arrest the accused. In such a case there was no justification for the High Court to direct the State to arrest the appellants against whom the first information report was lodged, as it amounted to unjustified interference in the investigation of the case. The mere fact that the bail applications of some of the appellants had been rejected is no ground for directing their immediate arrest. In the very nature of things, a person may move the Court on mere apprehension that he may be arrested. The Court may or may not grant anticipatory bail depending upon the facts and circumstances of the case and the material placed before the Court. There may, however, be cases where the application for grant

of anticipatory bail may be rejected and ultimately, after investigation, the said person may not be put up for trial as no material is disclosed against him in the course of investigation. The High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. This assumption, to our mind, is erroneous. A person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the investigating officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed in the course of investigation and other relevant considerations.”

Very obviously therefore, this court would not direct the arrest of the petitioners where the IGP himself has stated that their custodial interrogation is not required (seemingly at least at this stage).

Yet, in view of the fact that immediately before that he has stated that they are not cooperating in the investigation, I would not be inclined to make the interim orders passed in their favour absolute; with the petitions therefore consequently disposed of as having been rendered infructuous in the light of the statement of the IGP, to the effect that their custodial interrogation is not required presently.

Naturally, if their interrogation is required at any subsequent stage, all procedures provided in the Code of Criminal Procedure, 1973, shall be duly followed by the police.

Without subtracting in any manner from the 'generality' of the aforesaid observation, Sections 41 and 41-A of the Cr.P.C. are referred to, as

have been specifically pointed to by learned counsel for the petitioners. As to which of the two provisions the police would resort to, naturally is the discretion of the investigation agency, for reasons to be recorded in either case.

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

January 31, 2022
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes