

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-26245-2021 (O&M)
Date of decision: 21.04.2022

Amit

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Shakti Mehta, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Rajeev Anand, APP, U.T. Chandigarh
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.0047 dated 03.04.2021 under Sections 379, 457, 380, 379-B, 411 IPC and Section 21/61/85 of NDPS Act, registered at Police Station Naya Gaon, District SAS Nagar (Mohali).

On 25.01.2022, the petitioner was granted interim bail, by making the following observations: -

“...On 13.10.2021, the following order had been passed by this court:-

“Case heard via video conferencing.

After the order of this court dated 09.08.2021 was passed, on 18.08.2021 an affidavit dated 16.08.2021 was filed in court, executed by Shri Satinder Singh, SSP, SAS Nagar, with hearing in the matter adjourned to 14.09.2021, with the turn of the case not having come up on that date and hearing having been adjourned therefore to 6.10.2021. On that date learned State counsel had made a request for an adjournment due to which hearing in the case was adjourned till today.

A reading of that detailed affidavit however shows that the SSP has not even attempted to explain as to how a person who was arrested on 01.04.2021 as per General Diary Report no.48, dated 01.04.2021, registered at Police Station West, Sector 11, Chandigarh, (with the petitioner having been “handed over” on that date itself to Shri Gursewak Singh, DSP, Punjab Police, as recorded in the order dated 26.07.2021), could be arrested again coming on a motorcycle on 03.04.2021, as has been depicted in the FIR.

Learned State counsel submits that thereafter an affidavit dated 05.10.2021 has also been filed, a copy of which has also been received by counsel for the petitioner, but which is not on the record and obviously it had not been filed on 06.10.2021, with no reference made on that date, by learned State counsel appearing on that date.

Upon query of this court, learned counsel for the petitioner has read out from the affidavit dated 05.10.2021 (also stated to be executed by the SSP, Mohali), to submit that in fact action has been taken against the SHO of Police Station Naya Gaon, at whose instance the FIR in question

was registered, though some explanation has attempted to be given as regards apprehension of the petitioner on 01.04.2021 and thereafter again on 03.04.2021.

He has also read out however, that upon information having been received (as contended by the SSP), by the police party as had set up a picket (naka) at Naya Gaon, that the petitioner was carrying contraband and would be present in Sector-15, Chandigarh, on 01.04.2021, he had in fact been taken into custody from the petrol pump, which fact was duly recorded in the aforesaid General Diary Report lodged at Police Station West, Sector-11, Chandigarh.

However, as regards the police party having gone to U.T. Chandigarh, from Naya Gaon, he submits that it is admitted in the affidavit that no General Diary Report was recorded in Police Station Naya Gaon.

Learned counsel for the petitioner has next pointed out from paragraph 9 of the affidavit, that upon the petitioner having suffered a disclosure statement on 04.04.2021, 2.372 kg. of gold, one electronic weighing scale, a drill machine (allegedly used in the commission of the crime), 500 grams of intoxicant powder, and an empty box of stolen ornament and pouches were recovered.

Whereas learned counsel for the petitioner submits that actually nothing has been recovered at the instance of the petitioner with all that shown to be recovered having been planted on him to save the real culprits who have committed the robbery/theft at the premises of the complainant, yet, as regards intoxicant powder and other items shown to be recovered this court may have had its doubt (with contraband not being disposed of by the Punjab

Police in terms of the directions of the Supreme Court/notification of the Government of India, for which separate proceedings have been initiated by this court), false planting of 2.372 kgs. of kilograms would be found to be rather difficult.

Learned State counsel submits that as a matter of fact the petitioner is seen to be on CCTV footage also, at the time in question.

That being so, the IGP, Ropar Range, is now directed to go into the matter and to file a comprehensive affidavit as regards the petitioners' alleged involvement, including his being visible in the CCTV footage, with the IGP to look into the CCTV footage himself.

He shall also state as to what action has been taken against the DSP to whom the custody of the petitioner was handed over by the Chandigarh Police on 01.04.2021, with not even a General Diary entry having been made by the Punjab Police while taking custody of the petitioner on that date, with him thereafter shown to be arrested at a different place altogether on 03.04.2021, with again no General Diary entries made with regard to any police officer having gone from Naya Gaon to Chandigarh upon any information received as regards the petitioners' presence at the petrol pump at Sector 15, Chandigarh, upon alleged information received on 01.04.2021. It is made clear that any attempt at shielding either the DSP or any other person, shall be looked at extremely sternly by this court and this court will not stay its hands from passing adverse orders against any senior officer also, if such shielding is found.

Adjourned to 14.12.2021."

(It is noticed that on page 3 of the aforesaid order, it has been

observed in the last part of the sentence by this court that “false planting of 2.372 kgs.of kilograms would be found to be rather difficult”. It is clarified that what is meant by that phrase is that it would be difficult for this court to believe that 2.372 kgs.of gold would be planted on the petitioner; and therefore, the word kilograms coming after Kgs,is obviously a typographical error).

Pursuant to that order, the affidavit of the IGP, Roopnagar Range, dated 13.12.2021, is on record.

After referring to the order passed by this court in detail, the IGP has stated that an inquiry was got conducted by him through the SP (Investigation), SAS, Nagar, and it was found that on 30.03.2021, the petitioner went to the office/showroom of M/s Muthoot Finance, Sector 37-D, Chandigarh, to mortgage ornaments and that he was not in police custody on that date, which was found from the photograph of the petitioner available on the loan form in the record of that company, as also from the statement of the Manager of the said company.

It is to be noticed at this stage itself that the said visit on March, 30, 2021, is not denied by learned counsel for the petitioner, who submits that the petitioner went to mortgage 47.3 grams of gold with the said company.

The IG then states that it was found that on 31.03.2021, at about 8:50 pm, the petitioner made a call from his mobile phone to the Chandigarh Police Helpline, requesting for help, pursuant to which three officials of the Chandigarh Police, including one Sub Inspector and two Constables, reached the spot and met the petitioner about 100 meters away from the petrol pump in Sector 15, Chandigarh, “where he was inquired by Gursher Singh PPS, Deputy Superintendent of Police, City-I, Mohali and was released thereafter. The aforesaid facts reveal that the accused/petitioner was not in police custody even on 31.03.2021.

The IG next states in his affidavit that as per DDR No.48, (stated to have been recorded, as per learned counsel for the petitioner, at Police Station, West, Sector-11, Chandigarh), the petitioner, was arrested on 01.04.2021, and that therefore, as regards this court having observed earlier that he could not have been thereafter arrested on 03.04.2021 also, the explanation given by the IG is that as per the statement of Sub Inspector Sanjay Dutt of the Chandigarh Police, the DSP, City-I, Mohali (Gursher Singh), had released the petitioner after making inquiry from him and as regards the facts mentioned in DDR no.48 (with regard to handing over of the petitioner to the aforesaid police officials of the Punjab Police), that “was recorded for the purpose of record and the DDR entry (supra) in no manner suggests that the accused-petitioner was arrested at any point of time. The accused-petitioner was not in police custody even on 01.04.2021.

Next, the IG states on the availability of the CCTV footage, that none for the period of 30.03.2021 was found with M/s Muthoot Finance nor at the Petrol Pump, Sector 15, Chandigarh, from 31.03.2021 to 01.04.2021.

However, 46 different footages/photographs between 31.03.2021 to 04.04.2021 were obtained from the Police Station, Nayan Gaon, District SAS Nagar, with the presence of the petitioner not reflected at that police station during the said period.

Hence, as per the IG, the contention of the petitioner that he was arrested on March 30, 2021 from his house, or on 31.03.2021 from Sector 15, Chandigarh, were not found to be proved.

In this regard it is to be noticed at this stage by this court, that once it is admitted by the police itself that the petitioner was arrested by the police of Police Station Nayan Gaon, District SAS Nagar, on 03.04.2021, he would have been taken to that police

station; and consequently his presence not having been found even on that date in the CCTV footage of the cameras installed in the said police station is rather strange (to say the very least), for which no explanation whatsoever has been given by the IG.

Next it has been stated by the IG that a police party headed by Gursher Singh, DSP, had 'made inquiry' from the petitioner on 31.03.2021, on the basis of secret information received against him to the effect that he can reveal details with regard to thefts taking place in the area of Police Station Nayan Gaon. However, nothing objectionable was found in the possession of the accused-petitioner and therefore he was released on the spot, with instructions to come to the Police Station Nayan Gaon, for inquiry, but as he did not come present there, the DSP had directed the SHO to keep an eye on his activities.

The IG then states that on non-recording of a DDR entry with regard to the departure of the police party from Police Station Nayan Gaon, Inspector Kailash Bahadur (former SHO of the said police station), has been proceeded against departmentally vide an order dated 04.09.2021, passed by the SSP, SAS Nagar; and as regards Gursher Singh, DSP, he was also found to be negligent in not directing the aforesaid SHO to make an entry of departure or arrival in the DDR and departmental action has been recommended against him.

Finally, it has been stated by the IG in his affidavit that FIR no.47 (dated 03.04.2021) has been correctly found to be registered against the petitioner and his co-accused (stated to be one Sonu Kumar by learned counsel for the petitioner), and that the final report under Section 173 Cr.P.C. has been presented to the competent court on 24.09.2021.

The affidavit of the IG is ordered to be taken on record.

Learned counsel for the petitioner submits that the

petitioner has been wholly falsely implicated in the matter as would be obvious from the fact that the Chandigarh police also admits to having registered a DDR one day late, which is obviously an afterthought after an inquiry was directed to be initiated by this court, and with the DSP and SHO also having been recommended to be proceeded against departmentally, as regards the District Police Mohali, for not making proper DDR entries.

He further submits, on query by this court, that actually the petitioner is probably being implicated to shield the real culprits, with a complaint having been registered at Police Station Noorpur Bedi, District Roopnagar, by the Branch Manager of the State Bank of India, Noorpur Bedi, to the effect that the branch was looted in his absence on 30.03.2021.

The IG who has filed the affidavit, i.e. Mr. Arun Kumar Mittal, is directed to be personally present in court on the next date of hearing, to explain as to how the petitioner is not even visible as per the CCTV footage in Police Station Nayan Gaon on 03.04.2021, i.e. the date on which he is stated to have been arrested by police officials of that police station; and therefore, looking at the sequence of events, the whole story seems to be highly implausible to this court (at least in the form that it has been presented before this court).

The SSP, UT, Chandigarh, is ordered to be impleaded as respondent no.2 in the petition, with notice to be issued to him, returnable on 21.04.2022.

The SSP shall file an affidavit as to why DDR no.48 is stated to have been recorded at 2219 hours on 01.04.2021, pertaining (as per the copy thereof annexed as Annexure P-3, with the petition), to an occurrence that is stated to have taken place on 30.04.2021, and with him also to annex alongwith his affidavit, a copy of DDR

no.57 alleged to have been recorded at Police Station West, Chandigarh, as per DDR No.48...”

Affidavit of Inspector General of Police, Bureau of Investigation, Punjab as well as reply by way of affidavit of Senior Superintendent of Police, Chandigarh, filed in the Court today, are taken on record.

Though the contentions raised by the petitioner, as noticed in the earlier order passed by the Coordinate Bench, are, in fact, the defence set up by him, which are to be taken care of by the trial Court, while deciding the main case, however, considering the fact that the petitioner is granted the concession of interim bail, which has not been misused by him, I deem it appropriate to confirm the order dated 25.01.2022.

Accordingly, this petition is allowed and the order dated 25.01.2022 passed by this Court, granting interim bail to the petitioner, is hereby made absolute.

[ARVIND SINGH SANGWAN]
JUDGE

21.04.2022
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No