

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-45242 of 2018

Date of Decision: 8th April, 2022

Sumedh Singh Saini

Petitioner

Versus

State of Punjab and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Sant Pal Singh Sidhu, Advocate and
Mr. Rajat Dogra, Advocate for the petitioner.
Dr. Anmol Rattan Sidhu, Advocate General, Punjab with
Mr. H. S. Grewal, Addl. AG, Punjab with
Mr. Pratham Sethi, Advocate.
Mr. Sumeet Goel, Senior Advocate with
Mr. Aayush Neeraj Vaid, Advocate for respondent No. 2.

AVNEESH JHINGAN, J (Oral):

This petition was filed seeking directions to State that investigation of any matter involving the petitioner be handed over to Central Bureau of Investigation (hereinafter referred to as 'CBI') or any other independent agency outside the State of Punjab. Further direction was sought that arrest of the petitioner in any criminal matter may be kept in abeyance for a specific period to enable him to have recourse to the legal remedy.

The petitioner is a retired IPS Officer. He remained Inspector General of Police, Intelligence, Punjab in the year 2002 and thereafter headed State Vigilance Bureau, Punjab from 2007 to 2012. He was Inspector General of Police, Punjab from 2012 to 2015 and superannuated

on 30.6.2018. During his tenure, at least four FIRs were registered involving the then Chief Minister. The petitioner was at helm of affairs when the State was infested with terrorism. Due to active role of the petitioner in tackling terrorism, attempts were made on his life and he was provided 'Z' category security. As per the pleadings, the political party then in power unleashed vendetta against the police officers who investigated the cases having political fall-out. They were being implicated in old cases and the petitioner was no exception. In order to gain political mileage, all out efforts were made to arrest the petitioner.

During the pendency of this petition, on 11.10.2018 while issuing notice of motion, interim protection was granted to the petitioner that in case he is to be arrested in Kotkapura sacrilege case, case involving Aman Skoda or in any case pertaining to the period when the petitioner remained Vigilance Head or Inspector General of Police, Intelligence, Punjab or Director General of Police, Punjab, one week's advance notice shall be afforded to the petitioner to enable him to have recourse to the remedies in accordance with law. The protection granted vide order dated 11.10.2018 was extended on 23.9.2020 to include any incident during entire service of the petitioner.

On 10.9.2021, following interim directions were passed:

“(a) Considering it to be a case of exceptional circumstances and hardship being caused to the petitioner by the State of Punjab (on political grounds), there will be a clear stay for the arrest of the petitioner in all cases pending or likely to be registered or registered or where he is sought to be

implicated in the aid of Section 120-B IPC except FIR No. 77, where the matter is pending before the Hon'ble Supreme Court, till the General Election in the State of Punjab are held which are due in February, 2022 onwards.

The orders dated 11.10.2018 as well as dated 23.9.2020, to continue.

(b) There will be a clear stay for conducting further investigation in all the FIRs pending against the petitioner as the attempts are made to arrest him in the aid of Section 120-B IPC as even in the previous FIRs where such attempts are made and the petitioner had to file repeated petitions before this Court.

(c) There will be a clear stay of conducting or pursuing any other investigation including by any commission appointed by the State of Punjab till February, 2022.

(d) The personal appearance of the petitioner before any Court where any trial is pending shall also remain exempted till February, 2022 on moving an appropriate application under Section 205 Cr.P.C. before the said court.

(e) The petition will not leave the country without the prior permission of this Court till February, 2022.”

The State aggrieved of the above mentioned three interim orders filed Special Leave Petition. Following order was passed by the Supreme Court on 4.3.2022:

“Taking into consideration the peculiar facts and

circumstances of the instant case, we deem it appropriate to request Hon'ble the Chief Justice of the Punjab and Haryana High Court to take up the matter, pending adjudication before the High Court, either himself or assign it to any other Bench and dispose of the same in accordance with law, preferably within a period of two weeks, notwithstanding the pendency of these petitions.

List these matters after two weeks.”

It would not be out of place to mention that the petitioner is nominated in five FIRs mentioned below:

- (1) FIR No. 77 dated 6.5.2020 registered under Sections 364, 201, 344, 330, 219 and 120-B of the IPC at Police Station City Mataur, District SAS Nagar, Mohali to which Section 302 of the IPC was added lateron.
- (2) FIR No. 129 dated 7.8.2018 registered under Sections 307, 326, 324, 323, 341, 201, 218, 120-B, 34, 148, 149 of the IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station City Kotkapura, District Faridkot (added as accused vide G.D. No. 31 dated 9.10.2020).
- (3) FIR No. 130 dated 21.10.2015 registered under Sections 302, 307, 341, 201, 218, 166-A, 120-B, 34, 194, 195 and 109 of the IPC and Sections 25 and 27 of the Arms Act, 1959 at Police Station Bajakhana, District Faridkot (added as accused vide G.D. No. 16 dated 27.9.2020).
- (4) FIR No. 13 dated 2.8.2021 registered under Section

13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 as amended by Prevention of Corruption (Amendment) Act, 2018 and Sections 109 and 120-B of the IPC registered at Police Station Vigilance Bureau, Phase-1, Punjab at SAS Nagar (Mohali).

(5) FIR No. 11 dated 17.9.2020 under Sections 409, 420, 467, 468, 471, 120-B of the IPC and Section 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act Police Station Vigilance Bureau, Mohali.

In the first FIR, the petitioner was granted anticipatory bail by Additional Sessions Judge on 11.5.2020. Thereafter, Section 302 IPC was added and Supreme Court granted pre-arrest bail on 3.12.2020.

In the second FIR, in a writ petition filed by the petitioner, this Court quashed the investigation and ordered constitution of a Special Investigation Team (for short, 'SIT') of three senior IPS officers not including Mr. Kanwar Vijay Partap Singh. It was ordered that in case the petitioner was to be arrested, seven days clear notice should be given.

In third and fourth FIRs, the petitioner was granted pre-arrest bail by this court vide orders dated 1.3.2021 and 12.8.2021, respectively.

The petitioner when went to join investigation in FIR No. 13, he was arrested in case of FIR No. 11. *Habeas Corpus* petition was filed, the petition was allowed on 19.8.2021. The detenue was ordered to be released forthwith. It was further ordered that the Investigating Officer shall be at liberty to arrest the petitioner after giving him seven days notice and after seeking permission from the Bench hearing CRM-M-45242 of

2018.

Mr. Sant Pal Singh Sidhu, learned counsel appearing for the petitioner submits that the petitioner had invited wrath of the leaders of the ruling party (at the time of filing of the petition), resultantly was implicated in number of FIRs. The contention is that the petitioner had come on radar of the political parties, arrest of whom would mean securing a goal over the political opponent. To buttress the argument, reliance is placed upon the statements made by political leaders on various forums with regard to arrest of the petitioner. The submission is that even with changes, there is going to be no shift in stance of the State. After arguing at length, referring to the pleadings and documents in the petition and various miscellaneous applications filed, learned counsel for the petitioner concludes his contentions by restricting his prayer to four reliefs:

- (i) SIT should be constituted for investigating FIRs No. 11 and 13;*
- (ii) the petitioner should be served seven days' notice in case he is to be arrested in any FIR;*
- (iii) there is an apprehension of the petitioner being nominated in FIR No. 124 dated 3.9.2021, under Sections 353, 186, 323, 341 read with Section 34 IPC, registered at Police Station Balongi, District SAS Nagar. The FIR is regarding attack by an unknown person on a Vigilance Bureau Officer for making the video of arrest of the petitioner viral on social media. The prayer is that the petitioner be issued seven days prior notice in case he is*

to be arrested; and

(iv) the personal appearance of the petitioner in trial be exempted considering the security threats and intelligence inputs.

Dr. Anmol Rattan Sidhu, Advocate General, Punjab has no objection for constituting SIT in cases of FIRs No. 11 and 13, *albeit* he vehemently opposes the prayer made in the petition for transfer of investigation to CBI or any other independent agency outside the State.

The prayer that in any case if petitioner is to be arrested seven days notice be given meets opposition from Advocate General, Punjab. The contention is that blanket orders should not be passed by the Court.

Learned Advocate General submits that as on date, the petitioner has not been nominated in FIR No. 124. In case the petitioner is named in the FIR, the investigation would be handed over to SIT. Further in case the petitioner would be required, he will be given seven days prior notice.

Learned Advocate General contends that investigations in FIRs are not proceeding ahead as due to interim protections granted the petitioner has not joined the investigations.

Contention is that prayer for exemption of personal appearance of the petitioner is pre-mature.

Considering the backdrop of the petition, it was considered appropriate that apart from constituting SIT, the officer heading the SIT be also specified at this stage. Both the parties have no objection in case SIT is headed by Mr. S.S.Srivastava, Additional Director General of Police,

Punjab. The investigations of FIRs No. 11 and 13 would be immediately handed over to SIT and in case the petitioner is nominated in FIR No. 124, the investigation in that FIR would also be transferred to SIT.

Learned counsel for the petitioner submits that the petitioner will join investigations in all FIRs irrespective of the nature or the wordings of the protections granted by the Court.

At this stage, an issue arises that in all FIRs, except FIR No. 11, the petitioner is having protection from the court. This situation would have bearing in case the petitioner joins investigations in other FIRs.

Learned Advocate General, Punjab submits that investigating agency will not proceed in FIR No. 11 till 26.4.2022 to enable the petitioner to avail his remedy under Section 438 Cr.P.C.

Learned counsel for the petitioner submits that in the Habeas Corpus petition, liberty was granted to the Investigating Officer to arrest the petitioner after giving seven days notice but in any case, the petitioner would avail his legal remedies within the time mentioned i.e. 26.4.2022.

The contention of learned counsel for the petitioner that if the petitioner is to be arrested in any case, then seven days prior notice be issued is declined. There is no dispute on the proposition that blanket order granting protection to a person for non-bailable offences normally should not be passed. In **Gurbaksh Singh Sibbia and others v. State of Punjab, (1980) 2 SCC 365**, Constitution Bench of the Supreme Court while dealing with the decision of Full Bench of this Court in **Gurbaksh Singh Sibbia v. State of Punjab, 1978 CrL LJ 20 (FB)**, held as under:

"We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events; and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section".

(emphasis supplied)

In the present case, though initially the petitioner was granted interim protection, it would not be out of place to mention that much water has flown under the bridge in last four years since filing of this petition. Learned Advocate General, Punjab, on instructions from Harvinder Singh, DSP, Vigilance Bureau, Mohali states that as on date the petitioner is not

required in any other FIR except FIR No. 77 dated 6.5.2020, FIR No. 130 dated 21.10.2015, FIR No. 129 dated 7.8.2018, FIR No. 13 dated 2.8.2021 and FIR No. 11 dated 17.9.2020. It would be relevant to note that learned Advocate General has made a statement that in case the petitioner is nominated in FIR No. 124 dated 3.9.2021 and is required, he would be given seven days prior notice.

FIR No. 11 has been specifically dealt on the basis of the statement made by learned Advocate General that the investigating agency will not proceed in the said FIR till 26.4.2022, thereby giving sufficient time to the petitioner to avail his remedies. In all other FIRs, the petitioner was granted protection.

In the present scenario, the petitioner is aware of the cases he is involved in and he is apprehending his⁷ nomination in FIR No. 124 dated 3.9.2021. No special circumstances are made out for grant of blanket protection of seven days advance notice in case the petitioner is nominated in an FIR in future. Such a protection would be against the law laid down by the Supreme Court in Gurbaksh Singh Sibbia's case (supra), i.e. passing order for accusation yet to be levelled.

The prayer made for exemption of the personal appearance of the petitioner in the trial court, as rightly opposed by learned Advocate General, needs not to be dealt with at this stage. The appropriate stage and forum would be before the trial court when the petitioner is required to put an appearance. There can be no doubt that in case such a prayer is made, the same would be considered in accordance with law.

The petition is disposed of.

Since the main petition is disposed of, pending applications if any, also stand disposed of.

[AVNEESH JHINGAN]

JUDGE

8th April, 2022
mk

1. Whether speaking/ reasoned

:

Yes / No
2. Whether reportable

:

Yes / No

