

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

CRM-M-43289-2021

Date of Decision:09.08.2022

Chandan Kumar

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Saksham Malhotra, Advocate
for the the petitioner.

Mr. B.S.Sewak, Addl.A.G, Punjab.

Mr. Vivek Salathia, Advocate,
for the complainant.

AMOL RATTAN SINGH, J. (Oral)

On 15.11.2021 the following order had been passed in this petition, which was taken up alongwith CRWP-788-2019, that being a petition filed by the brother of the petitioner, seeking issuance of a writ of 'habeas corpus' for production of the petitioner herein, who, as per the petitioner in that case (his brother), had been illegally detained by police personnel of Police Station B Division, Amritsar, on 05.09.2019:-

“CRM-M-43289 of 2021

By this petition, filed under the provisions of Section 438 of the Cr.P.C, the petitioner seeks the concession of anticipatory bail, upon FIR no.0127, dated 28.04.2021, having been registered at Police Station Division ‘B’, Amritsar, alleging therein the commission of offences punishable under Sections 408, 420, 465, 467, 468 and 471 of the IPC.

Learned counsel for the petitioner submits that on April 28, 2021 the aforesaid FIR has been registered ‘against the petitioner’, allegedly on the basis of complaints received on 02.09.2019/09.09.2019, even though

no such complaint finds any mention in the affidavit of the Commissioner of Police, Amritsar, dated October 30, 2019, with even the Warrant Officer as had been appointed pursuant to CRWP no.788 of 2019 having been filed, never having been told of any such complaint; and thereafter the Commissioner having in fact found that the petitioner (Chandan Kumar) actually had been kept in illegal detention from 05.09.2019 till 08.09.2019.

Notice of motion, with Mr. B.S. Sewak, learned Addl. Advocate General, Punjab, accepting notice on behalf of the respondent State, on the asking of the court.

He points to the FIR, which refers to the complaint dated 02.09.2019.

However, in view of what has been contended herein above, which prima facie at least would seem to be correct, the petitioner is directed to join investigation within one week and upon his doing so, in case he is sought to be arrested, he would be admitted to interim bail, on his furnishing adequate bail and surety bonds to the satisfaction of the arresting officer/Illaq Magistrate. He shall abide by the 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 Illaq Magistrate immediately, who would then summon the arresting officer and direct him to join him in investigation.

Adjourned to 15.12.2021.

The Commissioner of Police, Amritsar, is directed to go into this matter also and get the affidavit of a gazetted officer filed, stating as to how any complaint, stated to have been received on 02.09.2019/09.09.2019 against the petitioner, was not referred to either at the time that the Warrant Officer discovered that the petitioner was in illegal custody or even in the affidavit initially filed by the Commissioner, and in fact with the Commissioner very fairly finding that the petitioner had been illegally detained in the police station.

It is to be noticed here that counsel for the complainant has reiterated the contents of the FIR, to submit that the petitioner having embezzled a large amount, he does not deserves to be admitted to even interim bail.

Even if the contention of the learned counsel complainant is correct (with at this stage this court not making any comment thereof), the very facts as have been depicted hereinabove, being as they are, I see no

hesitation to admit the petitioner to interim bail, pending an affidavit to be filed by a gazetted officer, under the direct supervision of the Commissioner of Police, Amritsar.”

A warrant officer having been appointed in the context of that petition, eventually it was found that the petitioner herein had been illegally detained, both as per the report of the warrant officer as also the affidavits filed by the Commissioner of Police, Amritsar, with that petition eventually disposed of on 22.07.2022, with Rs.50,000/- having been imposed upon the Addl.SHO of the said police station for such illegal detention, other than the fact that he as also the SHO and one other official also had been subjected to disciplinary proceedings by the Commissioner of Police and with in fact an FIR having been registered for illegal detention against the Additional SHO.

Thus, the petitioner was initially admitted to interim bail by this court in view of the fact that he appeared to have been, at that stage, illegally detained; but obviously the issue in this petition being on the merits of the FIR registered alleging therein the commission of offences committed by the petitioner, punishable under the provisions of Sections 408/420/465/467/468/471 of the IPC, (and with the FIR registered on 28.04.2021).

As per the learned State counsel, the petitioner is stated to have joined investigation on November 19 and 20, 2021, but as per his instructions, “he did not co-operate with the investigating agency as regards the entire issued of alleged embezzlement of goods that his employers' firm was dealing with and with the employer consequently being the complainant in the FIR.”

As per the affidavit dated 04.02.2022, filed by the Deputy Commissioner of Police, Amritsar, from 01.07.2019 to 31.08.2019 the

petitioner received 'Nestle' goods/products worth Rs.1,81,75,808/- against 2180 bills and Dabur goods/Products worth Rs.74,42,788/-, from the complainants' firm, for further supply to different shopkeepers in the area of Dal Mandi and Katra Sher Singh, Amritsar. However, he did not deposit the entire amount with the complainants' firm against the goods delivered. On inquiry, it came to light that he did not deliver goods/products worth Rs.29,27,307/- against 85 bills issued in the name of 27 different shopkeepers, and had misappropriated the same.

It has next been stated by the DCP that during the course of investigation "the delivery men", i.e. three persons named Rajinder Singh alias Sajjan, Manoj Kumar and Vikramjit Singh alias Vicky, revealed that the petitioner, on the pretext of the bazaar being congested, used to get the goods off loaded from them at the Corporation Park, Amritsar/his house, and thereafter hand over the bills purportedly signed by different shopkeepers as proof of delivery.

It has next been stated that the aforesaid Manoj Kumar also revealed that the petitioner called him on 03.09.2019 from his mobile number (given in the affidavit), and while admitting to his actions assured that the amount misappropriated by him would be returned; and with an audio recording thereof also forwarded to the complainant, which was produced before the police by the complainant, in the form of a compact disc and was taken into police possession.

Next, it has been stated that permission for recording the voice sample of the petitioner has been sought from the competent court, with the next date of hearing in that application itself being 28.08.2022 (as per

instructions of learned State counsel and counsel for the complainant).

The affidavit goes on to state that different shopkeepers who purportedly were supplied the aforesaid goods/products by the petitioner against the bills issued, were served with notices under Section 160 of the Cr.P.C. for associating themselves in the investigation, with the learned State counsel submitting that their statements have since been recorded to the effect that goods as were to be delivered to them against the bills/invoices were not delivered to them.

That being so, and though learned counsel for the petitioner has obviously tried to justify the action of the petitioner in various manners including stating that it was the delivery men who actually had been responsible for embezzlement and not the petitioner, however, in view of the fact that even a voice recording is stated to have been made, and though the application for voice recording is still to be considered finally by the trial court, at least for the purposes of this petition by which the petitioner seeks to be admitted to 'anticipatory bail', I see no reason to continue with it, which is consequently, dismissed.

However, all observations made in any order passed in this petition will only be in the context of such a petition filed under the provisions of Section 438 Cr.P.C. and naturally, as regards the investigation, it would continue as per law and as per evidence gathered, with the trial court also directed (with this court exercising jurisdiction under Section 482 Cr.P.C.), to ensure that the application for voice recording is disposed of at the very earliest, and since a contention raised by learned counsel for the petitioner is that even the investigating officer is not appearing before the trial court, the

Commissioner of Police is directed to ensure that the investigating officer appears on all dates that he is summoned for relevant hearings by that court.

It is also to be again noticed here that though as per the inquiry conducted by the Commissioner of Police, Amritsar, and the report or the warrant officer appointed vide an order passed in CRWP no. 788 of 2019, the petitioner was detained illegally in the police station between September 05 to 07/08, 2019; however, that is a separate issue altogether as regards the conduct of the police for such illegal detention; and as regards the allegations against the petitioner in the FIR, obviously that is a separate matter to be considered on its own merits.

August 09, 2022

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**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : YES