

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 51399 of 2021
Reserved on : 04.02.2022
Pronounced on : 09.02.2022

Gurdev SinghPetitioner

Vs.

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Mr. H.S. Sitta, AAG, Punjab.

ANOOP CHITKARA J.

Criminal Complaint	No. COMA 18/2021 dated 06.05.2021 under section 8(2) read with Section 9 of Punjab Good Conduct Prisoner’s (Temporary Release) Act, 1962, pending in the Court of CJM, Kapurthala.
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Challenging the order taking cognizance in a complaint filed by Asstt. Superintendent of Central Jail, Kapurthala, Panjab, under section 8(2) read with 9 of Punjab Good Conduct Prisoner’s Temporary Release Act, 1962, the accused of in the above captioned complaint, has come up before this Court under Section 482 CrPC for its quashing and all consequential proceedings.

2. The allegations leveled in the complaint which are relevant to decide this petition, mentioned in para Nos.7, 8 & 9 of the petition, reads as follows:

- (7). That it is pertinent to mention here that the petitioner during his periods of parole regularly kept contacting the authorities at Central Jail, Kapurthala from time to time in order to ascertain the date of his surrender. The petitioner was due to surrender of 09.03.2021. It is pertinent to mention here that on 09.03.2021 the officials of enforcement Directorate raided the house of the petitioner at 8 am in the morning and prepared a panchnama. A counter foil of the panchnama was also issued to the petitioner.*
- (8).That the panchnama reveals that the raid was started at 8 am in the morning and concluded at 3pm. After the raid the petitioner went to the jail authorities to surrender but they insisted on getting a negative COVID 19 test report. The petitioner therefore, had to return and on 09.03.2021 itself the petitioner gave his sample for testing.*
- (9)That unfortunately the result came positive even though the petitioner was asymptomatic. However, due to a positive result the jail authorities did not accept the surrender of the petitioner and asked him to get tested after two weeks and again report. The petitioner again got himself tested from Civil Hospital on 15.03.2021 but the*

result was positive. The petitioner again got himself tested on 25.03.2021. However, the report was still positive.

3. Vide impugned order dated 6-5-2021, in complaint captioned above, the Ld. Chief Judicial Magistrate, Kapurthala, took cognizance and proceeded against the accused.
4. Feeling aggrieved, the accused filed the present petition. I have heard the counsel for the parties and gone through the case file.
5. The petitioner was released on parole vide order dated 4-3-2020 from Kapurthala jail. Vide orders issued under the National Disaster Management Act, the lockdown was imposed due to the COVID-19 pandemic, and paroles were extended. Vide order dated 10-2-2021, the directions were issued to all the prisoners, whose parole was extended due to lockdown, to surrender in batches as per Annexure P-3. Although the petitioner was released from Kapurthala jail, he was directed to surrender in Pathankot jail on 9-3-2021.
6. As per paragraphs 7 & 8 of the petition, the Enforcement Directorate officials raided the petitioner's premises in the morning on 9-3-2021, and the raid continued till 3 p.m. After that, the petitioner was refused entry into jail because the time was over. After that, the petitioner tested COVID positive and tested positive per reports dated 15-3-2021 and 25-03-2021 (Annexure P-6). The petitioner claims that subsequently, the prison authorities did not accept his surrender until 13-04-2021, on which date also he had voluntarily surrendered.
7. A perusal of the order taking cognizance reveals that it has been passed mechanically without any application of mind. It appears that the concerned Prosecutor did not bring the indisputable facts to the notice of the concerned court, due to which the court took cognizance and issued the summons.
8. The explanation offered by the accused in the petition is not at all refuted or rebutted by the State. Instead, it is not countered at all. Even otherwise, the explanation offered is not only probable but plausible and truthful.
9. Given above, in the facts and circumstances peculiar to this case, the continuation of criminal proceedings will amount to misuse of the process of law and have to be disrupted at this stage itself. Resultantly, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the complaint and the order taking cognizance and issuance of summons in the above captioned complaint, along with all subsequent proceedings against the petitioner. The bail bonds of the petitioner are accordingly discharged. All pending application(s), if any, stand closed.

Petition allowed in the terms mentioned above.

(ANOOP CHITKARA)
JUDGE

February 09, 2022/anju rani
Whether speaking/reasoned: Yes
Whether reportable: No.