

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

....

CRM-M-53399-2022
Reserved on: 09.12.2022
Date of Decision:19.12.2022

AMARPAL SINGH

...Petitioner

Vs.

STATE OF PUNJAB

...Respondents

....

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE SURESHWAR THAKUR

....

Present: Mr. Rajvinder Singh Bains, Sr. Advocate assisted by
Mr.Mohinder Kumar, Advocate, for the petitioner.

Mr.Jasdev Singh Mehndiratta, Addl. Advocate General, Punjab.

M.S. RAMACHANDRA RAO, J.

This application has been filed under Section 482 Cr.P.C. by the applicant herein for expunging/deleting certain remarks and observations made against him in order dt.10.08.2022 passed by this Court in CRM-M-21391-2022.

The said CRM-M-21391-2022 had been filed by Sri Bikram Singh Majithia seeking regular bail under Section 439 Cr.P.C. in case FIR No.0002 dt.20.12.2021 registered under Sec.25, 27A and 29 of the Narcotics and Psychotropic Substances Act,1985 (for short 'the NDPS Act'), Police Station Punjab State Crime, SAS Nagar, Mohali.

Vide order dt.10.08.2022, this Court had allowed the said bail application subject to certain conditions prescribed therein.

While opposing the grant of bail to Sri Bikram Singh Majithia in CRM-M-21391-2022, the State of Punjab had relied extensively on statements

recorded under Section 161 Cr.P.C. after registration of the said FIR on 21.12.2021 against him and sought to contend that there is sufficient material to prosecute him for offences under Section 25, 27A and 29 of the NDPS Act.

Reliance was also placed on a sworn affidavit of applicant herein Amarpal Singh in CrWP-4029-2022 (filed as Annexure R1 to its reply by the State in CRM-M-21391-2022), which states as under: -

“Parminder Singh @ Pindi had told the petitioner in front of Satta that they supply chemicals used in medicines in Canada/America and in this work Satta and Bikram Singh Majithia are his partners.”

The above statement was similar to the statement made by him under Section 161 Cr.P.C. on 17.05.2022.

While considering *prima facie* whether the said statement could have been relied upon as material to prosecute Sri Bikramjit Singh Majithia for the offences committed under Sections 25, 27A and 29 of the NDPS Act, the following observations were made by this Court in its order dt.10.8.2022:

“The above statement does not disclose the year/time/place of his meeting with Parminder Singh @ Pindi where Satpreet Singh@ Satta was also present. Even taken at face value, it does not constitute any incriminating circumstance as the word ‘chemicals’ is a general term and there are many chemicals which do not fall in the category of ‘narcotic drugs’ or ‘psychotropic substances’ and used in manufacture/production of medicines. It appears to have been made with a view to get back police security given to him prior to February, 2022 and which the State had withdrawn after the new Government came to power after the elections to the Punjab State Assembly in February, 2022. It is not in dispute that the State did restore security to him in July 2022 after he filed CrWP. No.4029 of 2022 in which he made allegations that petitioner had made threats to him.”

The applicant wants the following portion to be deleted from the above extract:

“It appears to have been made with a view to get back police security given to him prior to February, 2022 and which the State had withdrawn after the new Government came to power after the elections to the Punjab State Assembly in February, 2022.”

In the later part of the said order, the following observation was made regarding the applicant herein: -

“There is an allegation made against the petitioner by Amarpal Singh @ Bonny Ajnala that there is a threat to his life from petitioner and his associates. But the same appears to be hyped up by the said person so that the police security, which was withdrawn from him after the change in the Government in February/March 2022, gets restored. It has admittedly been restored in July 2022 after he filed CrWP 4029/2022. “

The applicant wants deletion of this portion from this Court's order dt.10.8.2022 as well.

According to the applicant these observations are adverse to him, that they were not necessary for a just decision of the case and no opportunity was afforded to him before making such remarks. It was further stated that it was not really necessary for a just decision in CRM-M-21391-2022 to make such adverse remarks against the applicant who is a prosecution witness in the above said case/FIR registered against the accused Bikram Singh Majithia. It is contended that there is no evidence against the applicant for making such remarks/observations and they have been passed by ignoring facts, evidence and material on record. It is contended that this Court had ignored facts and evidence collected during investigation of ₹6000 crore alleged international drug case and these observations would allegedly affect the investigation and trial of the case in favour of the accused Bikram Singh Majithia, who has a high profile, and who was making mockery of the system for the last about 10 years.

Reliance is placed by the Counsel for the applicant on the following decisions of the Supreme Court:-

- (i) *The State of Uttar Pradesh Vs. Mohammad Naim*¹
- (ii) *Dr.Raghubir Sharan Vs. The State of Bihar*²
- (iii) *R.K. Lakshmanan Vs. A.K. Srinivasan and another*³
- (iv) *Niranjan Patnaik Vs. Sashibhusan Kar and another*⁴
- (v) *Manish Dixit and others Vs. State of Rajasthan*⁵
- (vi) *Parkash Singh Teji Vs. Northern India Goods Transport Co. Pvt. Ltd. and another*⁶

Counsel for the State left it to the Court to take a view in the matter and did not make any submissions.

We may point out that neither party has brought to our notice that any Special Leave Petition was preferred against the order passed by us on 10.08.2022 in CRM-M-21391-2022 wherein we had granted regular bail under Section 439 Cr.P.C. to Sri Bikram Singh Majithia in case FIR No.0002 dt.20.12.2021 registered under Sections 25, 27A and 29 of the NDPS Act.

In that scenario, we do not appreciate the following comments made by the petitioner herein against the order dt.10.08.2022 passed in CRM-M-21391-2022 in this application CRM-M-53399-2022 such as: -

“2. ...This Hon’ble Court failed to observe the fact that Satpreet Singh @ Satta was the main accused of ₹6000 crore international drug trade but due to his association with accused Bikram Singh Majathia, he was never nominated as accused by the police till December 2021 despite the fact that in the year 2013 Patiala Police claimed to have unearth this drug scam and his name appeared in police files. This Hon’ble Court failed to observe that till today route of drug to other countries is not traceable either by Punjab police or Enforcement Directorate due to involvement of high profile persons in the trade including Bikram Singh Majathia and Satpreet

¹ 1964 AIR (SC) 703

² 1964 AIR (SC) 1

³ 1975 (2) SCC 466

⁴ 1986 (2) SCC 569

⁵ 2001 (1) SCC 596

⁶ 2009 (12) SCC 577

Singh Satta. The petitioner had provided enough evidence regarding international drug trade but unfortunately instead of appreciating and encouraging the witnesses including the petitioner, this Hon'ble Court has made adverse observations/remarks against the petitioner and on the basis of these factually incorrect and against evidence observations, relief has been given to accused although he was indicated during inquiries by the senior police officers for his association with gangsters and anti-national elements. It is on record that during investigation of the case accused Bikram Singh Majathia influenced the officers, threatened the witnesses, destroyed the evidence and misled this Hon'ble Court but surprisingly relief was given to him and witnesses were targeted so that no one dares to come forward and provide the evidence in ₹6000 crore drug case."

The applicant cannot therefore make the above comments against merits of our order since he is not a party aggrieved by that order.

We may point out that in the said order itself this Court had observed that observations made by it are tentative and made only for deciding bail application and shall not be construed as an expression of a 'final opinion' on the issue as only after trial, such a finding can be recorded. It was also observed that nothing stated in the said order shall be construed as a final expression of opinion on the merits of the case and the trial Court should proceed independently of the observations made in the said order which are made only for the purpose of adjudicating the said bail application.

Conveniently, these statements in the above order have been ignored by the petitioner for the reasons best known to him.

There is no dispute that the High Court has inherent power to expunge remarks made by itself in certain circumstances as set out in the decisions cited by counsel for the petitioner.

In *State of Uttar Pradesh (1 Supra)*, the Supreme Court observed that it has been judicially recognized that in the matter of making disparaging

remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself ; (b) whether there is evidence on record bearing on that conduct justifying the remarks ; and (c) *whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.*

In ***Dr. Raghubir Sharan Vs. The State of Bihar (2 Supra)*** the Supreme Court held that (1) a judgment of a criminal court is final; it can be set aside or modified only in the manner prescribed by law. (2) Every judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a correlative and self imposed duty on a judge not to make irrelevant remarks or observations without any foundation, specially in the case of witnesses or parties not before him, affecting their character or reputation. (4) *An appellate court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it.* It was also reiterated that such *power should be exercised with great caution and circumspection* and that the expunction of such remarks will be done *if it does not affect the reasons for the judgment or the order.*

Similar view has been expressed by the Supreme Court in ***R.K. Lakshmanan Vs. A.K. Srinivasan and another (3 Supra)***, wherein it has been observed that the tests to be applied in considering expansion of disparaging remarks against persons or authorities whose conduct comes in for consideration before courts of law in cases to be decided by them are

(i) Whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (ii) Whether there is evidence on record hearing on that conduct justifying the remarks and (iii) *Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.* It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. *It was also observed therein that if the passages sought to be expunged could not be said to be irrelevant or alien to the subject matter of the case before the High Court then it ought not to expunge such passages.*

If we apply these tests to the facts of the instant case, it is not in dispute that the statements of the applicant made in the affidavit filed in the CRM-M-21391-2022 by the State as well as in the statement made under Section 161 Cr.P.C. on 17.05.2022 were strongly relied upon by the State to oppose the bail application of Bikram Singh Majithia as material containing sufficient material to prosecute him for offences committed under the NDPS Act. They were considered by this Court and found to be not containing any such material *prima facie* showing the involvement of the said individual in the offences alleged against him.

Admittedly, CrWP-4029-2022 (in which affidavit of the petitioner was filed) had been filed by the applicant in April 2022 and his statement under Section 161 Cr.P.C. was recorded on 17.05.2022.

Applicant does not dispute that police security had been given to him prior to February 2022, that the said security had been withdrawn from him after the change in the Government in February/March 2022, and it was restored to him in July 2022 after he filed CrWP-4029-2022. While discussing the question as to existence or non-existence of material against the accused Bikram

Singh Majithia in the commission of the said offences, in applicant's statements, the observations referred to above have been made by this Court suggesting a possible motive for the applicant to make the allegations against the said person.

It cannot be said that these observations are irrelevant or alien to the subject matter of the bail application being decided by this Court in CRM-M-21391-2022. Those remarks, in our opinion, were (i) an integral part of the reasoning of the High Court, (ii) cannot be said to be irrelevant or foreign to the matter in issue and (iii) inextricably intertwined with the *prima facie* view recorded by this Court in its order dt.10.8.2022.

We do not find the said remarks to be adverse or such as are likely to cause harm to the applicant herein.

Since all these remarks and even the other *prima facie* conclusions recorded in the order passed by this Court on 10.08.2022 in CRM-M-21391-2022 have been directed by this Court to be not construed as '*final expression of opinion*' on the merits of the prosecution case and it was clearly stated that they were made only for the purpose of adjudication of the bail application, we see no reason to expunge the said observations made against the applicant.

Accordingly, this Petition fails and is dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

19.12.2022
Vivek

(SURESHWAR THAKUR)
JUDGE

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| 1. Whether speaking/reasoned? | : | Yes/No |
| 2. Whether reportable? | : | Yes/No |