

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

COCp-3555-2017 (O&M)
Date of Decision : March 14, 2023

Lakhbir SinghPetitioner
Vs.
Shivani Garg and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Harshit Jain, Advocate
for the petitioner.

Mr. Sartej Singh Narula, Advocate
for respondent No.1.

Mr. A.S. Natt, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

This petition is pending since 2017 and the affidavit of the
Judicial Officer is filed today in the Court.

The petitioner alleges violation of the order dated
31.10.2017 passed in CRM-M-40698-2017 vide which the petitioner was
directed to join the investigation by contacting the Investigating Officer
in FIR No.84 dated 22.10.2017 under Section 61/1/14 of the Punjab
Excise Act, Police Station, Sherpur within five days from the date of
order and render all sort of co-operation. It is also directed that, in the
meanwhile, if he is arrested, he will be released on bail by the
Investigating Officer/Arresting Officer.

It is submitted that despite the order, the petitioner was arrested in another FIR No.116 dated 1.11.2017 under Section 61/1/14 of the Punjab Excise Act read with Sections 420, 483 IPC, Police Station City, Malerkotla. The petitioner was arrested on the same day, i.e. 1.11.2017 and the recovery under the Excise Act was effected from him.

Counsel for the petitioner has submitted that later on, the petitioner was granted regular bail in FIR No.116 on 13.11.2017 on furnishing bail/surety bonds.

However, the SHO, Police Station, Sherpur moved an application before respondent No.1 for seeking the custody through production warrants and respondent No.1-Judicial Magistrate passed an order for production of warrants on 6.11.2017 for 13.11.2017. It is stated that the order has been passed in violation of the interim order dated 31.10.2017 passed in the aforesaid CRM-M-40698-2017, which was filed for grant of anticipatory bail in FIR No.84 dated 22.10.2017 under Sections 61/1/2014 of the Punjab Excise Act, Police Station Sherpur.

It is relevant to mention here that vide order dated 17.11.2018, the comments of the Judicial Officer were sought and thereafter, the presence of the Judicial was called and she appeared in person.

In the affidavit of the Judicial Officer, it is stated that the order was passed in a legal manner as the petitioner was produced before her on 13.11.2017 in pursuance to the production warrants

issued by her as the petitioner was already in judicial custody in the FIR No.116 and he is was released on bail vide order dated 13.11.2017.

It is stated that the petitioner has never informed about the order dated 31.10.2017 as on next day he was arrested in FIR No.116 and was released on 17.11.2017 by the Illaqua Magistrate having jurisdiction over the Police Station City, Malerkotla, where the said FIR was registered.

It is further submitted that the petitioner was arrested in FIR No.116 of 01.11.2017 and till that time he did not bring the order dated 31.10.2017 to the notice of the Arresting Officer in the present FIR No.84 falling within the jurisdiction of the deponent. Therefore, the SHO, Police Station, Sherpur sought the arrest of the petitioner on production warrants in the FIR No.84 as he was already in custody in FIR No.116 and thereafter, the production warrants were issued and the petitioner was produced before the Court on 13.11.2017 and was released on bail on the same day, however, the petitioner, who was already in custody in FIR No.116 and was lodged in Sub Jail, Malerkotla was actually released on 18.11.2017 when he furnished the surety bonds before the concerned Illaqa Magistrate.

It is, thus, submitted that the petitioner, who was already in judicial custody w.e.f. 1.11.2017 in FIR No.116 and was released from the custody on 18.11.2017 in the said case FIR No.116 and in the intervening period, on the request made by the SHO, Police Station Sherpur falling within the jurisdiction of the deponent. The permission

to production warrants was granted and the petitioner was produced before the deponent being Illaqua Magistrate on 13.11.2017 in FIR No.84 when he was released on bail.

It is, thus, submitted that there is no unauthorized detention of the petitioner either by the police or ordered by the Illaqua Magistrate as the petitioner was in judicial custody in FIR No.116 w.e.f. 1.11.2017.

It is submitted that since the petitioner already stood arrested on 1.11.2017 and in the order granting interim bail it was the petitioner who has to contact the Investigation Officer within five days from 31.10.2017, i.e. a day prior to his arrested in FIR No.116 but no communication was sent by the petitioner to the Investigating Officer in FIR No.84 where the interim bail was granted and neither the SHO/Investigating Officer nor the deponent, being the Illaqua Magistrate were aware of the said fact.

It is, thus, submitted that the deponent has not violated the order dated 31.10.2017 passed in CRM-M-40698-2017.

After hearing counsel for the parties and in view of the well explained affidavit dated 8.3.2023 filed in the Court today by the Judicial Officer, the Court finds that there is no willful disobedience on her part and, accordingly, this petition is dismissed.

Rule is discharged.

March 14, 2023
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO