

219 2023:PHHC:112554
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 28.08.2023
IOIN-CRM-M-18507-2022 (O&M)

Jagjit Singh @ JaggiPetitioner
Versus
State of Punjab ...Respondent
CRM-M-22271-2023 (O&M)
Ogbonnaya Chukwudi EmmanuelPetitioner
Versus
State of Punjab ...Respondent
CRM-M-37804-2023 (O&M)
Amritpal SinghPetitioner
Versus
State of Punjab ...Respondent

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present:- None for the petitioner in IOIN-CRM-M-18507-2022.

Mr. Davinder Bir Singh, Advocate for petitioner
In CRM-M-22271-2023.

Mr. Kushagra Mahajan, Advocate,
For the petitioner in CRM-M-37804-2023.

Mr. Vinod Ghai, Advocate General, Punjab with
Mr. Aman Pal, Additional Advocate General, Punjab,
Mr. Dhruv Dayal, Additional A.G., Punjab and
Ms. Guramrit Kaur, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Lackadaisical manner and, the nonchalant telling tale of the conduct, or rather the misconduct, of prosecution in the criminal cases before Courts in State of Punjab, thereby inordinately delaying the trials on one hand, while the undertrials, on the other hand, continue to languish in jail for long periods, is borne out from the orders dated 20.02.2023 read with 14.03.2023, passed earlier by a coordinate Bench of this Court, then seized of the matter. Being apposite, same are reproduced herein below:

Order dated 20.02.2023

“The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail in FIR No.56 dated 07.09.2018 registered under Section 22 of the Narcotic Drugs

and Psychotropic Substances Act, 1985 at Police Station City-I Sangrur, District Sangrur.

One of the grounds raised on behalf of the petitioner to seek bail is the delay in the petitioner's trial.

Perusal of the interim orders passed by the trial court reveals that till date, even after the petitioner has suffered incarceration for 03 years, 05 months and 10 days, examination of not even one prosecution witness is complete. Ironically, all the witnesses of the prosecution are police officers. As per the record, on 06.04.2022, 11.05.2022, 01.06.2022, 05.07.2022, 02.08.2022, 13.09.2022, 04.10.2022, 11.11.2022, 21.12.2022 and 01.02.2023, the trial court has repeatedly passed orders seeking the attendance of PW - Head Constable Bhupinder Singh. In several of the afore-referred orders bailable warrants have also been issued to secure the attendance of Head Constable Bhupinder Singh who, in spite of having been repeatedly served has failed to put in appearance. In such a situation, instead of taking coercive steps to secure the witness's attendance the trial court has continued to mechanically issue fresh bailable warrants.

Before the adjourned date, the Senior Superintendent of Police, Sangrur is directed to file a report as to why in spite of several circulars issued by the Director General of Police, Punjab in this regard, in spite of service of bailable warrants, Head Constable Bhupinder Singh has not bothered to appear before the trial court.

The District and Sessions Judge, Sangrur shall also examine the record and file a report with regard to the passing of repeated "mechanical orders" by the Special Court at Sangrur.

Adjourned to 14.03.2023.

To be taken up in the urgent list."

Order dated 14.03.2023

In terms of the afore quoted order, the Senior Superintendent of Police, Sangrur (for short the SSP) and District and Sessions Judge, Sangrur have filed their respective reports which are ordered to be taken on record.

As per the SSP's affidavit, Constable Bhupinder Singh and ASI Ravel Singh had been repeatedly served to appear in the petitioner's trial but they did not and therefore, they are being departmentally proceeded against. On the adjourned date, the charge-sheet, if any, served upon these two officials shall be placed on the record.

The SSP's affidavit further goes on to state that to monitor attendance of police officials who are cited as prosecution witnesses a Prosecution Cell has been created in the District Court premises at Sangrur which is headed by Inspector Jarnail Singh along with ASI Ranjit Singh and ASI Harbhajan Singh as its members. A perusal of the orders of the trial court dated 01.02.2023 and 22.02.2023 reveal that in spite of service the summoned police officials have not appeared in the petitioner's trial. The SSP, Sangrur is directed to consider negligence, if any, on the part of the aforesaid members of the Prosecution Cell and file a report before the adjourned date.

The afore inaction on the part of the police officials to appear as prosecution witnesses also violates Circular dated 06.02.2023 of the Director General of Police, Punjab (for short the DGP). As per Para No.11 of the said Circular, the concerned Commissioner of Police/SSP has to monitor the functioning of the Prosecution Cells to be set up in each District Court to oversee attendance of the police officials cited as prosecution witnesses. Reports in this regard are required to be sent by the 5 of every month to the Director, Bureau of Investigation, Punjab. Such reports are to contain details of the defaulting police officials and the action taken against them.

Before the adjourned date an affidavit of the Director, Bureau of Investigation, Punjab shall also be filed with regard to the reports, if any, received by him from the entire State in terms of Para No.11 of the Circular dated 06.02.2023 of the DGP, Punjab.

The report of the District and Sessions Judge, Sangrur reveals the mechanical manner in which the trial court has been issuingailable warrants to secure the attendance of the police officials who are cited as witnesses for the prosecution. Without commenting any further on such conduct, this aspect of the matter be placed before the Administrative Judge, Sessions Division, Sangrur.

Adjourned to 22.03.2023.”

3. Given the nature of controversy and the ramifications thereof, on an earlier hearing, I had requested the learned Advocate General of the State, Mr. Vinod Ghai, Senior Advocate, to personally look into the matter and take it up with the competent authorities of the Government to take the requisite remedial measures. In course of hearing today, learned Advocate General and Mr. Aman Pal, Additional Advocate General, point out that in order to achieve the objective, as enumerated in the affidavit above, a general decision was taken for effective administration of the criminal law justice, as well as, to obviate any delays on the part of prosecution for non-production or appearance of the prosecution witnesses, who are generally the government officials and take appropriate strict measures in case, despite the Court summons/warrants, they fail to appear. He has drawn my attention to a Circular No.1/2023 dated 06.02.2023 addressed to all the Commissioners of Police in the various Commissionerate in State of Punjab, as well as, the Senior Superintendents of Police in the other districts, whereby they have been asked to ensure compliance of the Standard Operating Procedure (SOP), which was formulated vide an earlier circular dated 30.11.2022. SOP contains the broad guidelines

Government officials are the prosecution witnesses. The relevant part of the Circular dated 06.02.203 *ibid*, where in earlier SOP dated 30.11.2022 is also quoted, is reproduced hereinbelow:

“3. Detailed Standard Operating Procedure (SOP) to ensure timely appearance of police officials as PWs were issued vide No. 8542-81/E-3(4) dated 30-11-2022 which are reproduced below for ready reference:

(i). The Commissioner of Police/Senior Superintendent of Police/Unit Head shall designate a Deputy Commissioner of Police/Superintendent of Police/Assistant Inspector General rank as the Nodal Officer who shall be held personally liable for non-compliance with these Instructions.

(ii) The Nodal Officer shall prepare a weekly roster by 5.00 pm every Friday, containing the list of all the cases, particularly those registered under the NDPS Act, 1985, concerned with the Commissionerate District/Unit, which are listed for trial in the upcoming week, in which opportunity to depose as PWs is available. This roster shall also contain the details of all the police officers/officials who are yet to record their evidence as PWS in the respective cases. Special attention shall be given to the cases where the accused is/are still in judicial custody. The police officers/officials shall depose as PWs before the Trial Courts at the first available opportunity.

(iii) The Nodal Officer shall ensure that all such officers/officials are timely informed to appear as PWS before the concerned Trial Court at the earliest.

(iv) The CP/SSP/Unit Head shall also designate an Assistant Nodal Officer: of DSP rank to follow-up on the appearance of the above PWs in the cases listed for the particular week and report compliance to the Nodal Officer. The Nodal Officer shall submit a weekly compliance report to the CP/SSP/Unit Head by 5.00 pm every Friday, listing the police officers/officials who, despite intimation did not appear as PWs before the Trial Courts, reflecting the reason for their non-appearance. If the reason for the non-appearance of any officer/official is found to be unsatisfactory, appropriate departmental action shall be Initiated by the competent authority.

(v) All units shall send a monthly report by the 5th of every month to the Director, Bureau of Investigation, citing the number and details of defaulting police officers/officials and the action taken against them.

4. It has been decided to constitute "Pairvi Cells" in all Police Districts and Police Commissionerate to ensure timely service of summons/warrants to Police officials, particularly in cases registered under the NDPS Act, with the special focus on police officials posted outside the local area.

5. The Pairvi Cells should be headed by an officer of the rank of Inspector and should function under the supervision of the Superintendent of Police/Additional Deputy Commissioner of Police, Investigation.

6. Sufficient number of police personnel should-be posted in the Pairvi Cells. These police officials should be hand-picked and selected for their experience in court matters and service of warrants/summons.

7. The Pairvi Cell shall obtain on regular basis, preferably daily all the summons/warrants Issued from the concerned Naib Courts. All the summons/warrants Issued for the next week shall be consolidated by the Pairvi Cell and its officials are deployed for service.

8. *Pairvi Cell shall ensure that all police personnel whose summons/warrants are due in the coming week are informed through telephone call and WhatsApp message of the details of the case, date and concerned court well in advance. Picture of the summon/warrant shall be clicked by Pairvi Cell official and sent to concerned police witness through WhatsApp. It has been held by Hon'ble Supreme Court that service through WhatsApp is an accepted mode of service once the blue tick appears. However, WhatsApp would be used to supplement the service and the original summon/warrant shall be served personally and signature of the concerned police official be obtained as a token of acknowledgment of receipt.*
9. *The Pairvi Cell shall visit the Courts daily to mark the attendance of concerned police officials whose evidence is due on a particular day. The Pain Cell shall maintain a register in the court premises where the attendance is marked.*
10. *Daily report by Pairvi Cell shall be put-up before the SP/ADC Investigation who shall monitor and make efforts to ensure service of process and attendance of the police witnesses. Those who do not come present shall be issued SCN for why departmental action be not Initiated against them and departmental action shall be mandatorily Initiated against those police officials who do not depose on two successive occasions.*
11. *The concerned Commissioner of Police/SSP shall monitor the functioning of the Pairvi Cell on a regular basis. All units shall send a monthly report by 5th of every month to the Director, Bureau of Investigation, citing the number and details of defaulting police officials and the action taken against them."*

4. Learned Advocate General submits that he personally followed up the matter for strict compliance of the SOP and, also points out that not only the circular was issued to all concerned, but even an action taken report was sought from every district and Commissionerate.

Basis thereof, another affidavit dated 23.08.2023 deposed by Assistant Inspector General of Police (Litigation), Bureau of Investigation, has been also filed before this Court. Relevant contents of the said affidavit are as below:-

"4. It is submitted that data regarding appearance of police officers/officials as prosecution witnesses and action taken against erring officials for non-appearance before the trial Courts has been obtained for the period from March 2023 to July 2023 from all the field units and the same has been complied in the office of Director, Bureau of Investigation, Punjab, which is as under:-

<i>Number of Show Cause Notices issued for the period from March 2023 to July, 2023</i>	<i>278</i>
<i>Departmental Enquiries initiated for the period from March, 2023 to July, 2023</i>	<i>21</i>
<i>Punishment of Censure awarded for the period from March 2023 to July, 2023</i>	<i>12</i>
<i>Number of Show Cause Notices filed for the period from March 2023 to July, 2023</i>	<i>78</i>
<i>Number of Show Cause Notices pending decision for the period from March, 2023 to July, 2023</i>	<i>198</i>

5. That it is pertinent to mention here that the total number of police officers/officials who appeared as prosecution witnesses in furtherance of summons/bailable warrants/non-bailable warrants issued by the Id. Trial Court along with the number of police officers/officials who did not appear is mentioned in the table below:-

	Month	No. of Summons/Bailable Warrants issued by the trial Courts for appearance of police officers/officials during trial			No. of police officers/officials who appeared as Prosecution Witnesses in furtherance of Summons/Bailable Warrants/Non-Bailable Warrants issued by the trial Courts			No. of police officers/officials who did not appear as Prosecution Witnesses in furtherance of Summons/Bailable Warrants/Non-Bailable Warrants issued by the trial Courts		
		Summons	Bailable Warrant	Non-Bailable Warrant	Summon	Bailable Warrants	Non-Bailable Warrants	Summons	Bailable Warrants	Non-Bailable Warrants
1	March	55605	9014	1580	34666	4961	1024	7278	1543	174
2	April	54055	11264	1556	32611	5451	1049	8289	1194	186
3	May	57438	9263	1989	38940	6227	1570	6059	1491	162
4	June	31638	4772	801	19566	3089	616	4187	627	102
5	July	55445	8666	1458	35819	5557	1131	6949	1717	155
Total		254181	42979	7384	161602	25285	5390	32762	6572	779

In addition to the above, district wise information was also obtained from all the field units regarding number of summons/bailable warrants/non-bailable warrants issued and the number of police officers/officials who appeared as prosecution witnesses in furtherance of such summons/bailable warrants/non-bailable warrants. The information received from the field units was compiled in the office of Director, Bureau of Investigation, Punjab, Chandigarh and the same is annexed herewith as Annexure R-1.”

5. Having perused the contents of the affidavit as well as the Standard Operating Procedure formulated by the State and, seeing the follow up action, this Court sanguinely hopes that State in all earnestness will implement and enforce its aforesaid guidelines. In case of failure of compliance thereof, it shall ensure that action is taken against the erring officials to the logical conclusion, so that same acts as a deterrent in future for those, who do not comply with the guidelines.

6. In the general interest and overall welfare of the undertrials, as well as, speedy disposal of the pending criminal trials, I am of the view that it would rather be more appropriate that copy of this order containing the aforesaid Standard Operating Procedure is circulated to all the learned Judges in the District Judiciary Punjab, Haryana

as well as UT, Chandigarh, with a request to all presiding officers, that in case of non-appearance of an erring official in the Court, who is a prosecution witness, they shall also pass appropriate orders and take steps to ensure that action is taken by the department against such officials in terms of the Standard Operating Procedure. If any action taken report and/or compliance report of the Court orders is required to be submitted, they shall also pass further orders to this effect.

7. IOIN stands disposed of accordingly with a direction to the Registry to do the needful in terms of the preceding paragraph of the instant order.

8. Reverting to the case in hand i.e. CRM-M-22271-2023, same is also a glaring example of how an undertrial continues to languish in jail while on the other hand, prosecution keeps seeking adjournment as if it is a matter of right in case prosecution witness fails to appear or is not available owing to his convenience.

9. The chronology of sequence of the trial, inundated with adjournments due to non-availability of prosecution witnesses, being self-explanatory, is reproduced hereinbelow in the tabular form :-

FIR No. 0220 dated 29.11.2018
Under Section 21, 29, 61 of NDPS Act
Police Station City Khanna-2, District Khanna

A case of chance recovery	28.11.2018 at 10:00 PM.
Petitioner arrested	29.11.2018
Recovery	1 kg 700 grams of Heroin from pithu bag
Challan presented	06.05.2019
Charge framed	22.10.2019 u/s 22, 29 of NDPS Act
Total witnesses	16
Examined	09
Next date in Trial Court	29.08.2023
Zimni orders of the Trial Court pertaining to the dates on which the accused is not produced by the jail authorities	27.05.2019, 14.06.2019, 02.08.2019, 29.08.2019, 30.09.2019, 13.11.2019, 19.01.2021, 05.02.2021, 26.08.2021.
Zimni orders of the Trial Court pertaining to the dates on which no prosecution witness was present before the Trial Court.	06.12.2019, 18.12.2019, 07.01.2020, 21.01.2020, 10.02.2020, 02.03.2020, 19.01.2021, 05.02.2021, 25.02.2021, 23.03.2021, 09.02.2021, 24.09.2021, 09.05.2022
Zimni orders of the Trial Court pertaining to the dates on	24.09.2021 - B/W of C. Sukhwinder Singh

which the Bailable (B/W)/Non-Bailable Warrants (NBW) of the prosecution witnesses were issued by the Trial Court.	14.10.2021 - B/W of ASI Sukhwinder Singh 26.10.2021 - B/W of SI Balwinder Singh B/W of ASI Shamsheer Singh B/W of ASI Labh Singh B/W of ASI Jarnail Singh NBW of ASI Sukhwinder Singh 09.11.2021 B/W of SI Balwinder Singh B/W of ASI Shamsheer Singh B/W of ASI Labh Singh B/W of ASI Jarnail Singh NBW of ASI Sukhwinder Singh 24.11.2021 B/W of ASI Jarnail Singh B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 02.12.2021 B/W of ASI Jarnail Singh B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 09.12.2021 B/W of ASI Jarnail Singh B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 16.12.2021 B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 04.01.2022 B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 11.01.2022 B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar 19.01.2022 B/W of ASI Ajmer Singh B/W of ASI Parmod Kumar
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	Salary of SHO, Inspector Sikander Singh & HC Sukhdeep Singh was ordered to be attached. 20.04.2023 B/W of Jagwinder Singh Cheema 29.05.2023 B/W of Jagwinder Singh Cheema 11.07.2023 B/W of Jagwinder Singh Cheema
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10. This is fifth foray of petitioner seeking his release pending trial in a case bearing FIR No.0220 dated 29.11.2018 registered under Sections 21, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’), at Police Station, Khanna City 2, Khanna since earlier four bail petitions were dismissed as withdrawn.

11. Per prosecution version, on 29.11.2018, a *naka* (barricade) was erected by police officials at Priston Mall, Khanna. At about 10:00 p.m., they were carrying out routine checking of the vehicles. One Nigerian person was spotted, who was later identified as petitioner herein. He was carrying a back pack and on suspicion, the police stopped him and asked his name. After carrying out necessary formalities for conducting search of the petitioner, his back pack was opened. On checking, Heroin weighing 1 kg and 700 grams was recovered from his said bag. Petitioner was arrested on the spot. Samples were drawn. *Ruqa* was sent to the police station upon which FIR was registered. Petitioner continues to be in custody as an undertrial.

12. Learned counsel further contends that mandatory provisions of NDPS Act were not complied with in the present case. No independent witness was joined by the police party. Substance allegedly recovered was planted on him. Petitioner has thus been falsely implicated. Petitioner is not involved in any other case.

12.1 He also submits that after completing investigation, challan was filed in the

not required for further custodial interrogation. There is no likelihood of petitioner tampering with evidence and/ or influencing prosecution witnesses.

13. On the other hand, learned State counsel opposes the bail petition. He submits that petitioner has committed a serious offence. In case, petitioner is granted concession of bail, there are chances of his fleeing from justice as he is a foreign national. Learned State counsel further contends that recovery of contraband falls under commercial quantity and the rigors of Section 37 of NDPS Act would be attracted in this case. He, however, admits that no other case is pending against the petitioner.

14. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

15. On a Court query, learned State counsel, on instructions from ASI Sukhdev Singh, submits that challan was indeed filed more than 4 years ago i.e. on 06.05.2019. Charges were framed on 22.10.2019. Investigation *qua* the petitioner being complete, he is thus not required for custodial interrogation. Allegations against the petitioner are matter of trial at this stage. Out of 12 prosecution witnesses, nine have been examined so far. Conclusion of trial is likely to take some time as it is proceeding at a snail's pace. Bail allows an accused to maintain his freedom until his guilt or innocence is determined. Petitioner has already been languishing jail for the last more than 04 years and 08 months, being in custody since 29.11.2018.

16. Petitioner is being kept in preventive custody merely on an unfounded suspicion that if let out, he may either leave the country or tamper with evidence and/ or influence witnesses. There is no material documentary evidence except the FSL report *qua* contraband. The same has already been filed in the trial Court and the accused has no access to it. There is no probability of tampering with evidence as the same has already been seized by the investigating agency. As regards witnesses, they are all official and therefore, they are unlikely to be influenced. There seems no reasonable ground for the apprehension of the prosecution that the petitioner will influence it's

the petitioner to surrender his passport before the Court, with a further direction that, if released on bail, he shall not leave the country.

17. Offence allegedly committed by petitioner is of non-violent nature and in that sense his release on bail is not a threat to society at large by committing any violent crime. He is unlikely to commit any offence while on bail. At this stage, there also appears to be a reasonable ground that petitioner may not be guilty of the alleged offence.

18. Considering the overall scenario and without commenting on the merits of the case, the instant petition is allowed. I am of the view that no useful purpose would be served to keep the petitioner in further preventive custody.

19. Accordingly, petitioner is ordered to be released on bail in the instant case on his furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/learned Duty Judge, as the case may be, with the following added conditions, in addition the normal ones to be imposed by the court below :

- (i) petitioner shall surrender his Passport before the Court, if not already surrendered;
- (ii) petitioner shall furnish his permanent address and contact number to the Court and in case, he changes his address or contact number, he shall inform the Court;
- (iii) petitioner shall not leave the Country except with the prior permission of the Court;
- (iv) petitioner will not commit any similar offence;
- (v) petitioner shall furnish International Mobile Equipment Identity (IMEI) number of his mobile phone, as well as his mobile number, to the Investigating Officer and also furnish his weekly location to the IO and shall physically report to the IO every fortnightly and make himself available as and when otherwise required by the Investigating officer.
- (vi) petitioner shall never switch off his mobile phone.

20. In case, petitioner is found involved in any other case from past or gets involved in any offence while on bail, the prosecution shall be at liberty to seek cancellation of his bail in the instant case.

21. It is made clear that any observations and/or submissions noted hereinabove shall not have any effect on merits of the case as the same are for the limited purpose of hearing the instant bail petition alone and learned trial Court shall proceed with the trial in accordance with law without being influenced with this order.

22. Pending application(s), if any, shall also stand disposed of.

CRM-M-37804-2023

Vide detailed order of even date passed in IOIN-CRM-M-18507-2022, no further directions are warranted.

Instant petition bearing CRM-M-37804-2023 is disposed of with an expectation that learned trial Court shall keep in mind the Standard Operating Procedure, as above. Needless to say, that further trial shall proceed as expeditiously as possible.

Photocopy of this order be placed on the connected case files.

Before parting, this Court records its deep appreciation for Shri Vinod Ghai, learned Advocate General, Punjab and Mr. Aman Pal, learned Additional Advocate General for the earnest personal efforts collectively undertaken by them, in true letter and spirit, for effective and meaningful way-out to obviate the delays in the trials and, for rendering their valuable assistance and providing their inputs in drafting and implementation of the Standard Operating Procedure, as noted herein above.

(ARUN MONGA)
JUDGE

28.08.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No