

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

(118)

Neutral Citation No.2023:PHHC:086915-DB

CWP-14021-2023

Decided on : 12.07.2023

Raj Jit Singh Hundal

.....Petitioner(s)

Versus

Central Bureau of Investigation and others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Vikram Chaudhri, Senior Advocate with
Mr. Sangram Saron, Advocate,
Mr. Keshavam Chaudhri, Advocate,
Mr. Parvez Chaudhary, Advocate,
Ms. Hargun Sandhu, Advocate and
Mr. Madhav, Advocate for the petitioner.

Mr. Gaurav Garg Dhuriwala, Addl. AG, Punjab.

G.S. Sandhawalia, J. (Oral)

The petitioner in the present petition filed under Article 226/227 of the Constitution of India read with Sections 482/483 Cr.P.C. seeks production of the records pertaining to the PIL No.20359 of 2013 pending before this Court in respect to FIR No.1 dated 12.06.2017 registered under Section 59 (2) (b) of NDPS Act and Sections 218, 466, 471, 120-B IPC at Police Station STF, SAS Nagar, Mohali (Annexure P-2).

2. Similarly, a prayer is made for quashing of the status reports dated 30.01.2018 (Annexure P-10), 14.03.2018 (Annexure P-12) and 08.05.2018 (Annexure P-14) filed by the Special Investigation Team (SIT) as being vexatious and arbitrary. Challenge has also been raised to the communication dated 17.04.2023 (Annexure P-23) written by the Special Secretary (Home) wherein directions had been issued to the DGP, Punjab to nominate the petitioner as an accused in the abovesaid FIR. Similarly,

the investigation is sought to be referred to the Central Bureau of Investigation or any other independent agency by constituting a SIT comprising of such officers as deemed fit outside the State of Punjab. Resultantly, in view of the above prayers various orders passed by the Magistrate/Duty Magistrates, SAS Nagar, Mohali are being challenged.

3. Vide order dated 01.05.2023 (Annexure P-27) non-bailable warrants for arrest of the petitioner were issued, keeping in view the fact that the DGP vide order dated 18.04.2023 had appointed Shri R.K. Jaiswal, IPS/ADGP/STF, Punjab as the Investigating Officer. Keeping in view the recommendation made by the Home Secretary, which is subject matter of challenge, the petitioner being the former SSP, Moga had accordingly been nominated as an accused in the abovesaid FIR. Apart from the earlier offences in the case under Section 59 (2) (b) of NDPS Act and Sections 218, 384, 120-B, Section 29 of NDPS Act has also been added.

4. It is a matter of record that the petitioner is a former police officer, who had also been dismissed vide order dated 17.04.2023 (Annexure P-24) by invoking the provisions of Article 311 (2) (b) of Constitution of India and Rule 13 of the Punjab Civil Services (Punishment & Appeal Rules), 1970 by the Additional Chief Secretary to Government of Punjab, Department of Home Affairs and Justice. In pursuance of the orders of the Magistrate which are under challenge, fresh warrants for arrest were also issued on 18.05.2023 (Annexure P-29) and, thereafter, an application for preponement had been allowed by the Duty Magistrate on 06.06.2023 (Annexure P-37) for hearing arguments on the

application under Section 70 (2) Cr.P.C., which had also been adjourned to 03.07.2023 vide order dated 31.05.2023 (Annexure P-31).

5. The application for issuance of proclamation warrants was declined by the JMIC (Duty), SAS Nagar, Mohali on 22.06.2023 (Annexure P-43), however, he had issued warrant of arrest for 01.07.2023. The JMIC also noticed the fact that the petitioner herein wanted to seek the relief of recall of warrants issued against him without joining the investigation and was absconding and, therefore, the Magistrate had rejected the application for recalling the warrants. The learned Magistrate also noticed that in pursuance of the reports of the SIT, he had been nominated as an accused and, therefore, his presence was required. It is a matter of record that this Court had constituted a three member SIT to look into the issue of menace of drug dealing in the State of Punjab. It is on the basis of the reports the petitioner has been nominated as an accused. The SIT also had been constituted of senior police officials headed by an officer of the DGP rank and other of ADGP and IGP rank, respectively.

6. Vide order dated 01.07.2023 (Annexure P-44) the application was allowed and the proclamation under Section 82 Cr.P.C. was issued against the petitioner in the manner provided under Section 80 (2) (i) Cr.P.C. for 15.07.2023. The directions were issued that noting be given on the proclamation to publish the same on or before 15.07.2023, otherwise to return the same and case was directed to be put up for recording the statement of serving official.

7. It is interesting to note that the petitioner after passing of the order dated 06.06.2022 (Annexure P-37), had approached the Apex Court wherein apparently the relief claimed herein also was subject matter of

consideration in Writ Petition (Criminal) No.269 of 2023 (Annexure P-1). An SLP had also been filed wherein challenge was made as stated by the Senior Counsel to the order dated 28.03.2023 passed by us in PIL as noted above. On 20.06.2023 the following order was passed by the Apex Court in the said case:-

“W.P(Crl.) No. 269/2023

Having heard learned senior counsel for the petitioner and on perusal of the prayers sought for in this writ petition, we find that it is just and proper that the petitioner approaches the High Court under Article 226 of the Constitution of India seeking the aforesaid prayers or any other appropriate prayer. In the circumstances, the writ petition is dismissed reserving liberty to the petitioner to seek appropriate prayers before the High Court. Pending application stand disposed of.

SLP((CRL.) Diary No(s). 21445/2023

Permission to file SLP is granted.

Learned senior counsel submitted that the petitioner would not press this special leave petition. However, liberty may be reserved to the petitioner to seek modification of the impugned order or seek any other appropriate direction in the matter. His submission is placed on record.

The special leave petition is dismissed as not pressed with the aforesaid liberty being reserved to the petitioner.

Pending applications stand disposed of.”

8. Though counsel has sought to raise several arguments in support of his contention, we are firstly of the considered opinion that apparently for the last three months, the petitioner is well aware that he stands dismissed from service under Article 311 (2) (b) of the Constitution of India. He was also aware of the directions which had been issued which are in pursuance of our orders in the PIL, whereby liberty was given to the State to take action regarding the report received from the SIT. Then the Magistrate was also apprised that the petitioner is not coming forth, though

he was appearing since 31.05.2023 through counsel. Thereafter, arrest warrants were issued against him while declining the proclamation proceedings.

9. We are of the considered opinion that an alternative and efficacious remedy is available to the petitioner under the Code of Criminal Procedure under Section 438 as he is apprehending the arrest, in view of the law laid down by the Division Bench of this Court in **Puran Singh Vs. Ajit Singh and others, 1984 (2) RCR (Crl.) 532**, wherein it was held that Section 438 Cr.P.C. makes no distinction whether arrest is apprehended at the hands of police or at the instance of Magistrate. The learned Division Bench also held that the grant of anticipatory bail depends upon the merits of the particular case and not on the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.

10. The said view was also followed by a Full Bench of the Madhya Pradesh High Court in **Nirbhay Singh and another Vs. State of Madhya Pradesh, 1996 (1) RCR (Crl.) 197**. Since there was a difference of opinion, the view taken was as per Division Bench judgment of this Court. Relevant portion of the said judgment reads as under:-

“15. In view of what we have indicated above, we are in respectful agreement with the view taken by the High Court of Punjab and Haryana that an application under [Section 438, Criminal Procedure Code](#) would be maintainable even after the Magistrate issued process under [Section 204](#) or at the stage of committal of the case to the Sessions Court or even at a subsequent stage, if circumstances justify the invocation of the provision. This is not to say that the jurisdiction under [Section 438](#) of the Code is to be freely exercised without reference to the nature and gravity of the offence alleged, the possible sentence

which may be ultimately imposed, the possibility of interference with the investigation or the witnesses and public interest. With great respect, we are unable to agree with the view taken by the High Court of Rajasthan.

11. Faced with this situation, Senior Counsel submits that he be given liberty to approach the Court of competent jurisdiction to avail of his alternate remedy in accordance with law.

12. Keeping in view the above, we are of the considered opinion that the petitioner is apprehending arrest on account of being nominated as an accused, which is on the basis of the report submitted by the Senior Officers as being part of SIT. Firstly it would be appropriate that he avails the said remedy as substantial period has expired and he has not come forth. It is settled principle of law that investigation is to be conducted in a timely manner and expeditiously and the accused may take the benefit of delay. In such circumstances, since the matter is already pending for 15.07.2023 before the Magistrate, the limited relief we grant is that the said Magistrate shall defer the issuance of taking a call on the proclamation on the said date for a period of one week, since the petitioner's right would be adversely affected, if he is declared a proclaimed offender and his right to seek anticipatory bail would be affected on this sole ground.

13. Resultantly, we are of the considered opinion that it is imperative that before any legal issue can be raised regarding other aspects, it is for the petitioner to avail his remedy and if the benefit is granted he can thereafter raise any legal issue subsequently. But at this stage to nip everything in the bud would not be called for. Needless to say that since we are relegating the petitioner to his alternate remedy in

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accordance with law, the competent Court shall not be swayed by anything said herein, since the reasons are recorded only for relegating him to avail of his alternate remedy.

14. The petition stands disposed of with the abovesaid observations.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

12.07.2023
Naveen

Whether speaking/reasoned :	✓ Yes	No
Whether Reportable :	✓ Yes	No