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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-47822-2023(O&M)

Date of Decision: 09.10.2023

Siddharth Chattopadhyaya

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R. Kartikeya, Advocate for the petitioner.Mr. Gurminder Singh, Advocate General, Punjab with
Mr. Gaurav Garg Dhuriwala, Addl. A.G. Punjab.

ARUN MONGA, J.

Himself a guardian of citizens' rights and an enforcer/protector of law for 35 years, the petitioner, an ex IPS officer, now a senior citizen, is before this Court, as the tables have turned on him after he retired as Director General of Police, Punjab. He seeks protection of his own rights, fearing that he may be falsely implicated in a case at the behest of certain influential people/senior police officials with oblique motive.

2. Petition herein is under Section 482 Cr.P.C. for directing respondents to grant the petitioner seven days advance notice, in case the life and liberty of the petitioner is intended to be impinged in case FIR No. 1 dated 03.01.2018 registered under Sections 306, 384, 506 and 120-B IPC registered at Police Station, Airport, Amritsar (Annexure P-1);

and/or in the alternative;

For directing stay of investigation in case FIR No. 1 dated 03.01.2018 registered under Sections 306, 384, 506 and 120-B IPC registered at Police Station, Airport, Amritsar (Annexure P-1), qua the petitioner;

AND/OR in the alternative;

For quashing the Investigation conducted in case FIR No. 1 dated 03.01.2018 registered under Sections 306, 384, 506 and 120-B IPC registered at Police Station, Airport, Amritsar (Annexure P-1) along with all consequential proceedings, qua the petitioner in

for Non-Resident Indians Act, 2011 as well as on merits.

3. First and foremost, let us have a look at the impugned FIR, relevant extract, thereof is as under:

"Statement of Prabhjeet Singh S/o Inderjit Singh Chadha, resident of 506 Green Avenue Enclave Amritsar, aged about 27 years stated that I am resident of the above mentioned address. Today on 03.01.2018 my mother called me at about 2PM and told me that the driver Raj Kumar @ Raju had called her and told that some incident involving my father Inderjit Singh Chadha had taken place and he had been taken to IVY Hospital Airport Road and told me to go there. When I reached the hospital, I came to know from the driver Raj Kumar alias Raju S/o Kishan R/o village Kulaar, Police Station, Kathgarh, Nawan Shahr, that my father had come to meet someone at Green Acre, Airport Road, Amritsar and stopped the car and told me to see the vehicles parked over there, after some time, when I came back, I saw that Inderpreet Singh Chadha was lying on the front seat of the vehicle and was bleeding, he immediately picked him up, blood was flowing from his mouth and nose and his revolver had lying fallen in his feet. Keeping in mind the events that have transpired in the past, I am assured that the cause of my father's death is Surjit Singh, Ummat, Kuljit Kaur alias Ghoman, Manaya, Davinder Sandhu from WWICS Inderpreet Singh Anand alias Sizee, Gursewak Singh, Hari Singh Sandhu, Bhag Singh Ankhi, Nirmal Singh, Ravinder Kaur wife Varundeep Singh and other persons who conspired with each other and created such situations that false cases have been filed against my father Inderpreet Singh. According to the facts there are enough evidences against all of them. These above said persons have forced my father to die, appropriate legal action should be taken against them. Sd/-Prabhpreet Singh Chadha dated 3.1.18."

4. During investigation of the FIR (Annexure P-1), several diary entries (described by the prosecution as suicide notes) were recovered, same are reproduced below:

"Note dated 10.04.2016

"...Davinder Sandhu took Rs. 8.5 crores for investment in property from me. He refused to repay me back when property in question turned out to be illegally developed. Glada issued an advertisement even neither he has given me the property nor return my money. Only threatened me with tamishing my family's reputation in connivance with Kay & Manya. Chattopady of NRI commission is hand in glove with them."

Note dated 29.05.2016

"... Kay in league with Manya and Davinder Sandhu had against forged an agreement, a tripartite agreement. The signatory Jeni has signed in a date when the company under it is present name "Superficial Health & Spa" did not exist, phone number 9781088403 did not exist, the agreement is not embossed, the notice under Arbitration Act is posted after obtaining stay from Judge and the High Court judge does not show much concern

after hearing the same. The pattern is the same NRI Commission. There she has Chatopadya here the judge himself."

Note dated 02.06.2016

"This may be treated as my final suicide note... There is a particular officer (IPS) Chattopadya who has gone out of his way to help Kay in her illegal activities. Only God knows why. Now Judge Amit Rawal in spite of knowing everything is extending patronages to her openly in the court. God bless India, with such judges around you do not need criminals."

The aforesaid diary entries, suicide notes are though stated to have been written by the deceased in the months of April, May and June 2016 and the deceased committed suicide on 03.01.2018, after a lapse of more than year and a half. No doubt the petitioner has been named by the deceased alleging that he was hand in glove with the persons who were tarnishing the reputation of the deceased. To say, that the same is either an immediate cause of the deceased taking extreme step of committing suicide or otherwise should be contributory factor, is though highly doubtful, but be that as it may, the same is for the investigating agency to unravel. Suffice at this stage to note, that the aforesaid diary entires are stated to be the reason of investigating agency seeking to record the statements of the petitioner giving his version *qua* the same.

5. Succinct factual narrative, relevant for the disposal of instant petition, is as under:

5.1. Petitioner (now aged 63 years) retired after serving as Director General of Police, Punjab. He was also appointed as a member of the State NRI Commission on 27.03.2012 and served as such till 09.08.2016.

5.2. An order 15.12.2017 (Annexure P-2) passed by a Division Bench of this Court in CWP No. 20359 of 2013 titled as "Court on its Own Motion versus State of Punjab" shows that, while considering the menace of drugs in the State of Punjab and the nexus between the law enforcement agencies and drug traffickers, this court had passed an earlier order dated 28.11.2017 vide which an STF was constituted. STF was to be headed by Mr. Harpreet Singh Sidhu (the the Additional Director General of Police) to investigate the issue of complicity of Raj Jit Singh SSP, Moga in the breaking of the nexus between the law enforcement agencies and drug traffickers. Said Raj Jit Singh had averred before the court that on account of the latter's alleged personal bias

against him, he was not likely to get a fair and impartial investigation at the hands of Mr. Harpreet Singh Sidhu, head of the STF.

5.3. Without going into the allegations of applicant against Shri Sidhu, the Division Bench, in partial modification of his earlier order dated 28.11.2017, passed a said subsequent order dated 15.12.2017 (Annexure P-2), thereby directing that the allegations of complicity of Raj Jit Singh Hundal, SSP, Moga, in respect of his alleged association with Inspector (Inderjit Singh) emanating out of FIR No.1 dated 12.06.2017, be investigated by a Special Investigation Team comprising of (i) Siddharth Chattopadhyaya, IPS, the then DGP -HRD i.e. the petitioner herein, (ii) Prabodh Kumar, IPS and (iii) Kunwar Vijay Pratap Singh, IPS.

5.4. Subsequently, an application dated 05.04.2018, Annexure P-3, was moved by the present petitioner in then pending CWP No. 20359 of 2013, seeking transfer of the investigation of case FIR No. 1 dated 03.01.2018, registered at Police Station, Airport, Amritsar (Annexure P-1) to the Central Bureau of Investigation or to a Retired Judge of this Court. Pursuant thereto, a Division Bench of this court passed an order dated 06.04.2018(Annexure P-4), directing that the investigation of the said FIR (No. 1 dated 03.01.2018) *qua* the petitioner shall remain stayed.

5.5. The aforesaid interim order remained in force till final disposal of CWP No. 20359 of 2013 vide judgment/order dated 15.09.2023(Annexure P-6). Para 60 of the order *ibid*, being relevant is as under:

“Keeping in view the fact that the reports were submitted way- back, we are also of the view that the stay granted in favour of Mr. Chattopadhyaya at that point of time on 06.04.2018 was only an interim measure adopted due to the impression given to the Co-ordinate Bench that he was being hounded at that point of time by his seniors. Much water has now flown since the stay was granted and the fact that two of the officers have already superannuated and the third is no longer in the State of Punjab. We therefore, accept the argument of Mr. Dhuriwala that the stay of the investigation cannot continue in perpetuity in FIR No.1 dated 12.02.2015 lodged at Police Station Airport, Amritsar since on account of an interim order, the State has not completed the investigation and filed the final report qua the Head of the SIT. Resultantly we leave the said issue open for the Head of the SIT to seek his legal redressal if any regarding challenge to his implication in the said FIR, in accordance with law.”

5.6. The aforesaid direction in the Court's order dated 15.09.2023, appears to have led to the filing of the instant petition by the petitioner, seeking the relief as aforesaid.

6. On previous hearings i.e. on 03.10.23 and 05.10.23, I had part heard the case at length. Arguments were addressed by Mr. R. Kartikeya, learned Advocate for the petitioner and Mr. Gaurav Garg Dhuriwala, learned Addl. A.G. Punjab. In course thereof, there was an unconfirmed suggestion about likely reconstitution of the SIT. On a Court query to Mr. Gaurav Garg Dhuriwala, Addl. A.G., *qua* the same, he had sought time.

7. On resumed hearing today, I also had the benefit of the assistance of learned Senior Advocate Mr. Gurminder Singh, Advocate General, Punjab. He informs that earlier SIT constituted vide order dated 06.04.2018 shall continue as before, to investigate the matter further. There is no proposal to reconstitute the existing SIT.

8. Learned counsel for the petitioner has pointed out that one Kuljit Ghuman had filed a complaint before the NRI Commission for investigation of the fraudulent acts of Inderpret Singh Chadha, now deceased. The Commission looked into the matter and passed a final order dated 21.12.2017, whereby a recommendation was made to the Commissioner of Police, Ludhiana to register an FIR u/s 406 and 420 IPC against said Inderpret Singh Chadha. The petitioner herein had ceased to be its member on 09.08.2016. The said order dated 21.12.2017 was thus passed by the State NRI Commission long after petitioner discontinued to be its member. He submits that this circumstance goes a long way to negate so called note in the diary of the deceased - Inderpret Singh Chadha, insinuating that the petitioner had gone out of the way to help the complainant - Kuljit Ghuman in her alleged illegal activities.

8.1. He also points out that, Annexure P-17, Status report dated 20.04.2023 filed by the police in CWP No. 20359 of 2013 shows that Shri S.S. Srivastava, IPS, the then Commissioner of Police, Amritsar; the mother of accused-Kuljeet Kaur Ghuman and Hon'ble Mr. Justice Amit Rawal, whose names were also found mentioned in the suicide notes of deceased Inderpreet Singh Chadha, were found innocent in the case FIR

9. In the aforesaid background, learned counsel for the petitioner contends that, petitioner has been falsely dragged in the impugned FIR, at the behest of certain senior officer, to desist him at the relevant time, from holding an independent and fair inquiry into the nexus between the law enforcing agencies and the drug peddlers, wherein the names of senior police officers were also emerging.

9.1. He also contends that the stand taken by the respondent State in several proceedings including the Public Interest Litigation before this Court, *ex facie* reflects that the intentions are to implicate the petitioner in the said FIR No. 1 dated 03.01.2018, with the underlined purpose to curtail his liberties.

10. He would also argue that the petitioner is not even named in the FIR and is thus innocent. His arrest without a reasonable prior notice would mean huge humiliation and harassment, mar his social image and deprive him of his liberty and dignity.

11. Learned State counsel would per contra argue that, even though the petitioner is not named in the FIR, but admittedly his name has figured in the course of investigation. The investigation qua the petitioner remained stayed for over 5 years under the orders of the Division Bench of this Court. The Division Bench order dated 15.09.2013(Annexure P-6) has now paved way for further investigation in the case *qua* the petitioner. Questionnaire for his interrogation has been prepared and he is yet to be interrogated. At this nascent stage of investigation qua the petitioner, it would not be appropriate to go into the merits of submissions made by the learned counsel for the petitioner endeavouring to show his innocence or that he is being/or has been dragged into the FIR in question and on that basis to seek quashing of the FIR.

11.1. He also produced a copy of questionnaire containing 19 questions for the petitioner's interrogation in the case, which is taken on record and marked as Annexure "A". The direction for prior notice before arrest as sought by the petitioner would impede effective investigation of the offence by the police qua the petitioner and give him a blanket protection beyond the relevant legal provisions, which permit the arrest of an accused without notice.

11.2. Copy of questionnaire Annexure 'A' was handed over to the learned counsel for the petitioner in course of hearing. He out-rightly submitted that petitioner never declined to respond to the questionnaire, but the same was not served on him. He further submitted that petitioner has no hesitation to answer the said questionnaire and he be given reasonable opportunity to respond to the same as it is a very old matter.

12. Having heard the competing contentions and perused the record appended with the petition, I shall now proceed to deal with the same so as to dispose of the instant petition.

12.1. True, that if as a result of petitioner's interrogation and/or other investigation, if the investigative agency so feels, then he can be immediately arrested without a prior notice. Equally true, that the petitioner, as of now, is not named in the FIR. But the fact remains that an accusing finger has been pointed against him in the diary entry dated 02.02.2016 of the deceased as reproduced above (described by the prosecution as suicide notes).

12.2. Admittedly, the investigation qua the petitioner remained stayed for over 5 years under the orders of the Division Bench of this Court. The Division Bench order dated 15.09.2013 (Annexure P-6) has now paved way for further investigation in the case *qua* the petitioner. Questionnaire for his interrogation has been prepared and he is yet to be interrogated.

12.3. At this nascent stage of investigation qua the petitioner, I do not consider it appropriate to go into the merits of and to comment upon the aforesaid other submissions made by the learned counsel for the petitioner endeavouring to show that the petitioner is innocent, but yet is being/or has been dragged into the FIR in question and to pass any order for or against the quashing of the FIR itself. That, however, does not prevent this Court from dealing with and deciding the petitioner's prayer for grant of a prior notice before arrest.

13. In **Gurbaksh Singh Sibbia v. State of Punjab**¹, a constitution bench of the Apex Court *inter alia* held that the filing of a first information report is not a condition precedent to the exercise of the power under Section 438 (for the grant of

anticipatory bail). This legal position is not disputed. As already noted, in present case, the petitioner is not named as an accused in the FIR. His name figured during investigation in a diary entry dated 02.02.2016 of the deceased as reproduced above (described by the prosecution as suicide notes). Thus, the power under Section 438 for the grant of anticipatory bail could have been exercised by this Court, in the event petitioner had applied for anticipatory bail.

13.1. In the case in hand, petitioner seeks a lesser relief i.e. of a prior notice before arrest. Section 482 of the Code of Criminal Procedure is much wider in scope than Section 438. It provides that nothing in the Code *ibid* shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any Court or otherwise to secure the ends of justice. This being the position, I am of the opinion that this Court has the power and is under a duty to make such orders as may be necessary *inter alia* to secure the ends of justice.

14. As already stated, the Division Bench, in its wisdom, passed order dated 06.04.2018 (Annexure P-4) directing that the investigation of FIR No.1 dated 03.01.2018 qua the petitioner shall remain stayed. The aforesaid order of stay remained in force till final disposal of CWP No. 20359 of 2013 by the Division Bench vide its order dated 15.09.2013 (Annexure P-6). Thus, under orders of the Division Bench, even the investigation of the FIR qua the petitioner remained stayed for more than five years. In my opinion, the limited relief of prior notice before arrest sought herein, if granted at this stage, would not materially prejudice/hinder the exercise of powers of police to investigate the case or mean in any unfair advantage to the petitioner. To my mind, in order to secure the ends of justice and, in the very peculiar facts and circumstances of the case, it is fit case for exercise of the inherent power and the performance of duty of this Court to grant the limited relief for a prior notice before arrest of the petitioner.

15. It has though been argued by learned Advocate General that granting any interim indulgence at this stage by the Court would amount to giving blanket bail to the

petitioner. However, I am unable to persuade myself with his argument, Pertinently,

neither is there any prayer in the petition asking for any absolute restraint on the respondents and/or SIT or any other police officials against arrest of the petitioner come what may, nor is this Court passing any such order.

15.1. Learned AG also fairly stated that as on today petitioner is not an accused in the FIR in question. But, he also took strong objection that the petitioner is not letting the investigation proceed further by not responding to the questionnaire, which was served him on way back in 2018. As regards his not responding to questionnaire, despite it's being served in 2018, I find that there is justifiable reasons on the part of the petitioner. As already noted herein above, vide an order dated 06.04.2018 passed by Division Bench, further investigation qua the petitioner was stayed. It is only after the said interim order was vacated that it now turns on the petitioner to respond to the questionnaire. Being so, I am of the opinion that the petitioner cannot be faulted for deliberately not co-operating with the investigating team, when the investigation against him was stayed by virtue of interim order passed by Division Bench.

15.2. In the premise, petitioner is directed to forthwith join the investigation. He shall also respond to the questionnaire (Annexure 'A') positively within a period of two weeks from today, as well as, any other questions that the SIT may ask him, in course of the investigation.

15.3. Learned Advocate General also submitted that it is only after the petitioner's response, further call will be taken as to what course is to be adopted in the investigation, as well as to determine whether there is any probable culpability on the part of the petitioner.

15.4. Given that, the investigation remained stayed for as long as 5 years, it would be rather just and proper that petitioner, instead of being taken by surprise, and that the ends of justice would be met by a direction to the respondents to grant advance notice to the petitioner in case he is to be apprehended/arrested in case FIR No. 1 dated 03.01.2018. It is accordingly so ordered.

15.4. It is made clear that 7 days prior notice, to be given to the petitioner, shall pertain only to FIR No.1 dated 03.01.2018 registered under Sections 306, 384, 506 and

120-B of IPC and it shall not be construed, in any manner, as a blanket protection if he is required in any other case.

16. For the limited purpose of grant of this relief, it seems neither necessary nor proper to go into the merits of and to comment upon the aforesaid other submissions made at length by the learned counsel for the petitioner endeavouring to show that the petitioner is innocent but is being/or has been dragged into the FIR in question and on that basis to pass any order for or against the quashing of the FIR itself.

17. As a result of above discussion, the petition is partly allowed and the respondents are directed to grant seven days advance notice to the petitioner in case he is to be apprehended/ arrested in case FIR No.1 dated 03.01.2018 u/s 306/384/506/120-B IPC registered at Police Station, Airport, Amritsar (Annexure P-1).

18. It will be open to the petitioner, depending upon further developments in the case, to seek stay of the investigation and quashing the FIR *ibid* qua him and/or any other appropriate relief in accordance with law.

19. Also, before parting I may hasten to add here that though the observations in the proceeding part of the order are tentative for the limited purpose of the disposal of the instant petition and same shall not be construed as expression of any opinion on the merits of the case.

20. With the aforesaid directions the petition stands disposed of.

21. Pending application(s), if any, shall also stands disposed of.

09.10.2023

Jyoti Thakur/mahavir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No