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

CRM-M-29962-2017

Date of decision : 28.04.2023

Gurmail Singh**.....Petitioner****versus****State of Punjab****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Ms. Samina Dhir, Advocate
for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

*********RAJESH BHARDWAJ, J.**

Petitioner has approached this Court by way of present petition praying for quashing of the FIR No.63 dated 17.06.2016, under Sections 15/61/85 of NDPS Act, registered at Police Station Balongi, District SAS Nagar (Mohali), Punjab and the impugned final report dated 30.12.2016 under Section 173 Cr.P.C. (Annexure P-3) along with subsequent proceedings arising therefrom.

Succinctly, the facts of the case are that the impugned FIR was registered on the complaint of SI Harminder Singh. It was alleged that on 17.06.2016, they were on patrolling duty and at about 02:00 PM, a secret informer gave information that Shashi Pal son of Roshan Lal, Baldev Singh son of Jarnail Singh, Harnek Singh son of Narang Singh, resident of Village Chadiala Sudan were in the business of selling poppy husk. It was informed that Binda brings poppy husk in his truck and thereafter, they unloaded the poppy husk from the truck No.PB-11BU-

8315 Mark TATA 3118 and supplied to their customer in Car No.PB07F-0199 Mark Zen and Car No.PB-65-AC2-0963 Mark Alto opposite to the Petrol Pump Chappar Chiri. In case of raid being conducted, they could be apprehended with the poppy husk. Finding the information to be reliable and *ruqa* was sent in pursuance for registration of the FIR. FIR was registered for the offence under Section 15/61/85 of NDPS Act. The raid was conducted and the accused namely, Shashi Pal, Baldev Singh were arrested with the contraband along with the car. On interrogation of Baldev Singh, he disclosed about the co-accused Gurwinder Singh @ Giani and Harnek Singh son of Narang Singh. The case property recovered was deposited in the police station and thus, four accused namely, Shashi Pal, Baldev Singh, Harnek Singh and Gurwinder Singh @ Giani were arrested. On interrogation of accused Harnek Singh, he made a disclosure statement that he had purchased four bags of poppy husk from Harjinder Singh @ Binda. As the investigation was under progress SI Harminder Singh along with his companion accused and DSP Harsimrat Singh went from Manakpur for Village Saneta. They saw a car bearing No.PB-65-N-5515 coming from Village Saneta, number of which was already known to them as the same belonged to Gurmail Singh and it was stopped. On the asking, driver told his name as Gurmail Singh son of Sardara Singh. SI Harminder Singh told Gurmail Singh that co-accused Baldev Singh disclosed him during investigation that he had supplied two bags of poppy husk to him and thus, the offer was given to him for the search of his car. Thereafter, the search of car was conducted in the presence of DSP Harsimrat Singh and two plastic bags of poppy husk were recovered from the dicky of the car. The samples were taken out from both the bags and on weighing one bag was found to be 27 kg whereas the second one was found to be having

24 kg of poppy husk, thus, total weight of poppy husk was 51 kg. Resultantly, the petitioner was also arrayed as an accused and on completion of investigation, challan was presented against all the accused including the petitioner.

Learned counsel for the petitioner has vehemently contended that the petitioner has been falsely and frivolously implicated in this case. It is submitted that evidently as per the case of prosecution itself, the impugned FIR was registered on the basis of secret information, however, she has submitted that neither the name of petitioner was mentioned in the secret information nor there was any recovery made from him. She submits that it was during the investigation of all the co-accused a disclosure was made by the co-accused and the petitioner was clandestinely implicated in this case. She vehemently submits that the case was falsely planted upon the accused as he had been shown to be traveling in the car from which recovery of two bags of poppy husk weighing 51 kg was allegedly made. She submits that the petitioner had already sold the car which is evident from the sale agreement dated 25.05.2016 to Baldev son of Jarnail Singh. She has submitted that from the bare reading of the agreement, it is evident that the petitioner sold the car bearing No.PB-65-N-5515 to Baldev Singh on 25.05.2016 for a total amount of Rs.3,95,000/- and the possession was also handed over to Baldev Singh on the same date. She submits that the impugned FIR had been registered on 17.06.2016 and the petitioner had been implicated in this case during investigation of the co-accused arrested from the spot. She has submitted that from the sale agreement, it is evident that the car involved in the offence was not only sold by the petitioner to Baldev Singh but the possession was also handed over to him on the very same date and thus, there was no question of the petitioner travelling in the

car with the alleged contraband as alleged by the police in the challan. Thus, false implication of the petitioner is writ large. She has however, submitted that no independent witness was joined by the investigating agencies which caused a serious doubt regarding the authenticity of the allegations made in the FIR and the challan filed. She has submitted that the petitioner has been named in the FIR on the basis of disclosure statement of co-accused Baldev Singh which is not admissible evidence which further strengthens the arguments of the petitioner regarding his false implication. She submits that the Gazetted Officer was already with the Investigating Officer at the time of the arrest of the petitioner and thus, there was no other Gazetted Officer joined during his arrest in this case. She has submitted that conscious possession is also not proved from the facts and circumstances of the case and thus, in the overall facts and circumstances, false implication of the petitioner is writ large. She has relied upon the judgments titled as *State of Rajasthan Vs. Ram Chandra, 2005(2) RCR (Criminal) 586, Sukhwinder Singh and others Vs. State of Punjab, 2014(33)RCR (Criminal) 94* wherein she has submitted that in the similar facts and circumstances, Hon'ble Supreme Court as well as this Court has held that the prosecution of the petitioner is nothing but an abuse of the process of the Court and thus, FIR deserves to be quashed.

Learned State counsel, on the other hand, has vehemently opposed the submissions made by counsel for the petitioner. It has been submitted by learned State counsel that though the petitioner was not named in the FIR, however, the police registered FIR on the basis of secret information received and thereafter, on registration of the FIR, raid was conducted. He has submitted that the accused named in the secret information were arrested with the contraband, poppy husk and it was on

the disclosure statement of the co-accused Baldev Singh, the name of the petitioner also surfaced. He has submitted that resultantly, the raid was conducted and the petitioner was apprehended with the car No.PB-65-N-5515 which was duly registered in his name. He has submitted that the offer as enshrined under Section 50 of the NDPS Act, was given to the petitioner and search of the car was made by the police party. On search of the same, two bags of poppy husk were found lying in the dicky of the car which was being driven by the petitioner. Thus, from his conscious possession, total 51 kg of poppy husk was recovered by the police. He vehemently opposed the submissions made by counsel for the petitioner that the conscious possession of the contraband was not proved rather he has submitted that the petitioner was arrested on spot along with the car which he was driving and from the same car recovery of 51 kg of poppy husk was effected. Thus, conscious possession is duly proved. He has submitted that the sale agreement relied upon by the petitioner is totally a fabricated document and has been made only in order to create defence in his favour. He has submitted that admittedly petitioner is the owner of the car and he was arrested on spot with the contraband. He has submitted that the investigation is already complete, investigating agencies have found enough material substantiating the allegations made in the FIR. He further submits that the petitioner is involved in a heinous offence which pertains to commercial quantity and thus, he has no case for quashing of the FIR. He has submitted that as per the law settled, the FIR against the petitioner is not liable to be quashed.

After hearing counsel for the parties and perusing the record, it is evident that the FIR was registered on the basis of secret information in which the name of the co-accused were mentioned. Finding the secret

information reliable, the case was registered and the investigation commenced. During the course of investigation, name of the petitioner came to the surface on the basis of disclosure statement of co-accused namely, Baldev Singh, on the basis of same, raid was conducted and the petitioner was apprehended while driving the car No.PB-65-N-5515. After apprehending him, the police gave him offer under Section 50 of the Act for the search of car and thereafter search of the dicky of car was conducted from which two bags of poppy husk, weighing 51 kg was recovered. Petitioner was arrested on spot. The contentions raised by counsel for the petitioner regarding sale of agreement for selling the car to Baldev Singh is totally a disputed question of fact. Petitioner is the owner of the car from which the contraband has been recovered. The investigating agencies have completed the investigation and the report under Section 173 Cr.P.C. is also filed. Filing of the challan against the petitioner, *prima facie* shows that the investigating agencies have collected the evidence in support of the allegations made in the FIR. Recently, Hon'ble the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and another, 2021 SCC Online SC 315** has held that the High Court should exercise the power of quashing under Section 482 Cr.P.C. sparingly with great circumspection. While relying upon case of **State of Maharashtra Vs. Arun Gulab Gawali (2010) 9 SCC 701**, the Hon'ble Supreme Court in **Neeharika Infrastructure Pvt. Ltd** case (supra) has observed as under:-

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7.7(13) *The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "CrPC") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure. However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers.*

The cases relied upon by the learned counsel for the petitioner would be of no avail to him as the facts of the said cases are distinguishable from the facts of the present case.

The conscious possession of the contraband is disputed by the counsel for the petitioner, but the same is required to be proved by leading evidence before the trial Court and at this stage, no benefit of the same can be given to the petitioner.

Hon'ble Supreme Court in State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335 has held that the High Court has inherent power under Section 482 Cr.P.C. for quashing the FIR, however, the same should not be exercised for the offence falling under the heinous categories.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court finds that case in hand fails to qualify for invoking the inherent jurisdiction. Resultantly, the present petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

28.04.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

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Yes/No