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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49406-2019 (O&M)

Date of decision: October 06, 2023

Kuldeep Singh @ Sonu

....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ravi Malhotra, Advocate for petitioner.

Mr. Hakam Singh, AAG Punjab.

ARUN MONGA, J. (ORAL)

Petitioner, currently an under trial but on bail vide trial court order dated 29.10.2019, *inter alia*, seeks direction to respondents No. 1 to 3 for transferring the investigation of the case bearing FIR No.280 dated 23.09.2019, under Sections 21/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (referred to as 'NDPS Act') (Section 29 of NDPS Act added later on), registered at Police Station City Kapurthala, to the CBI or to the Vigilance Department.

2. Per the First Information Report (FIR), on 23.09.2019, ASI Sylwaster Masih, along with ASI Kuldeep Singh, were on duty, when a person was seen coming from Kusht Ashram. On seeing the police party, he became perplexed and immediately turned back. In his nervousness, he took out two polythene envelopes from the pocket of his pants and threw them on the grass at the corner of the road. ASI, with the help another police official, apprehended him on the spot. When inquired about his name and address, he disclosed his name as Kuldeep Singh i.e. petitioner herein. He himself disclosed that polythene bags contained heroin and opium.

2.1. Aforesaid information was given to SHO Police Station City, Kapurthala. Upon this, SI Varinder Singh, along with other police officials, reached the spot on a private vehicle. An attempt was made to join the public witness, but everybody expressed inability, and nobody was ready to join the police party. The SI then picked up the polythene and Heroin was recovered therefrom. Upon weighing it came out to be 20

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grams. Opium was also recovered which weighed 250 grams. The petitioner was arrested on the spot.

3. Learned counsel for petitioner argues that aforesaid FIR is a complete misuse and abuse by the police officials. No such incident, as narrated in the FIR actually took place. Alleged contraband was planted on the petitioner since he refused to the extortion demand of the police officials, who picked him up from his work place in the morning of the fateful day and later in the evening, to teach him a lesson, showed him arrested in an NDPS case by planting small quantity of heroin and opium. He submits more elaborately that on September 23, 2019, at approximately 11:00/11:30 a.m., six to seven plainclothes police officers entered the petitioner's workshop, where he operates his car wash and parking business. They demanded money from the petitioner, and when he expressed his inability to comply, ASI Sylwaster Masih, ASI Kuldeep Singh, H.C. Major Singh, and Constable Gurwinder Singh physically assaulted the petitioner, coerced him into signing blank papers, and then took him to a location at Goindwal Sahib Road at T-Point, where they subjected him to severe physical abuse. The petitioner's wife learned of this incident at around 1:52 p.m. and immediately called the police helpline number 112 (reference number 30321). Her complaint was duly registered, and she received a confirmation message from the relevant department, a copy of which is included in Annexure P-3.

3.1. The counsel further asserts that the unlawful actions of the police officers were captured on CCTV cameras installed in the petitioner's office. Subsequently, after detaining the petitioner from his workshop, he was falsely implicated in the present FIR. The petitioner's arrest was falsely portrayed as occurring near Khust Ashram in the evening, and intoxicant materials were planted on the petitioner. Copies of these photographs are enclosed in Annexure P-2. The lower court granted regular bail to the petitioner on October 29, 2019.

3.2. The counsel states that the petitioner also submitted a written representation dated November 6, 2019, to the Director General of Police, to take action in the matter, but received no response.

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3.3. The counsel further argues that on January 24, 2021, Sub Inspector/LR Varinder Singh submitted a reply in which he claimed that the police officials mentioned above, at 10:29 a.m., were en route from the office of STF Kapurthala to Mohalla Malkana on foot, searching for potential wrongdoers. They received secret information suggesting the petitioner's involvement in the sale of intoxicants/drugs, and he, along with his colleagues, was conducting surveillance in the area. When the petitioner noticed them, they entered the car parking area where two young men were already present, one clean-shaven and the other a Sardar individual. After a conversation, the team members left the car parking area, and the petitioner joined them in his vehicle, offering to drive them to Goindwal Sahib. HC Major Singh and Constable Sham Masih 4/244 accompanied the petitioner to prevent any suspicions. ASI Kuldeep Singh and Constable Gurvinder Singh followed on a motorcycle (despite earlier stating they were on foot) and disembarked near Chungi Fatta Dyinga. This confession demonstrates that the police took the petitioner against his will, and their current version is an attempt to exonerate themselves. A copy of this statement is included in Annexure R-1/T.

3.4. The counsel further contends that on the same day, the petitioner's arrest was documented at 6:00 p.m., purportedly on a secret information, implicating him in a false case involving 20 grams of heroin and 250 grams of intoxicant powder. It is evident that the petitioner has been wrongly accused in the NDPS case.

3.5. The learned counsel states that this court previously directed the SSP, Kapurthala, to provide information on the CCTV footage. In response, Raj Bachan Singh Sandhu, PPS, SSP, District Kapurthala, submitted an affidavit dated May 30, 2022, in which he specified that the police officials entered the petitioner's premises and provided information regarding the cameras. However, SSP claimed that the CCTV footage did not show the police personnel taking the petitioner. Nevertheless, the SSP neglected to consider that the head of the police team admitted in his statement (Annexure R1-T) that they used the petitioner's car.

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3.6. The counsel further submits that on September 6, 2022, Sh. Surinder Kumar, PPS, Assistant Inspector General of Police, Jalandhar Rural, submitted a status report in compliance with the order issued by a coordinating Bench of this Court on May 31, 2022. He reiterated the same information, indicating that the police officers had falsely implicated the petitioner in a fabricated case, and that senior officers, rather than taking action against them, are attempting to shield them. Petitioner is thus seeking the intervention of this Court to issue directions as prayed for.

3.7. Learned counsel for the petitioner relies on decision of Apex Court rendered in **Vinay Tyagi versus Irshad Ali @ Deepak and others**¹, decisions of this Court rendered in **Sarabjit Singh versus State of Punjab**², **Balwinder Singh @ Kukku versus State of Punjab and others**³, **Simerjit Kaur versus State of Punjab and others**⁴ and **Abhishek Chetal versus Central Bureau of Investigation and others**⁵ in support of his contention regarding transferring of FIR in question to CBI.

4. On the other hand, the learned State counsel opposes the petition and submits that the FIR in question has rightly been registered against the petitioner. He was apprehended by the police and 20 grams of heroin and 250 grams of opium were recovered from him.

5. I have heard the learned counsel for the petitioners and reviewed the court file.

6. I have also perused the affidavit dated May 30, 2022, submitted by Raj Bachan Singh Sandhu, the Senior Superintendent of Police for District Kapurthala, the contents therein are self-explanatory and being apposite, relevant paras 7 and 8 thereof are reproduced as below :-

*“7. That it is respectfully submitted that on the basis of the record as well as the report of the CCTV footage of the then Superintendent of Police (Investigation) Kapurthala, the detailed chart of the time, date and location of CCTV cameras, which the petitioner/ accused have mentioned in the petition are as follows:-
Number of Clips and Camera Details:-*

¹ 2013 (4) SCC (Cri) 557

² 2022 (1) R.C.R. (Criminal) 253

³ 2021 (3) R.C.R. (Criminal) 578

⁴ Decided on 18.04.2022

⁵ 2019 (2) R.C.R. (Criminal) 177

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Sr. No.	Name of the File	Cam no.	Time & Date	Location of camera
1.	Clip 1	Cam-01	Time 11:32:41 A.M. at 11:50:08 A.M (date 23.09.2019)	Camera installed inside car washing and car parking centre area which shows main entry gate of car washing and car parking area.
2.	Clip 2	Cam-02	Time 11:33:16 A.M. to 11:49:41 A.M. (Date 23.09.2019)	Camera installed inside car washing and car parking centre area which shows main entry gate of car washing and car parking area.
3.	Clip 3	Cam-06	Time 11:32:33 A.M. to 11:40:00 A.M. (Date 23.09.2019)	Camera installed outside car washing and car parking centre area which shows main entry gate of car washing and car parking area.

The details of the recordings of Camera (Video Clip 01) Cam-01-installed inside car wash and car parking centre which shows main gate entry.

Time	Date	Content of CCTV Footage
11:32:41 A.M.	23.09.2019	CCTV footage starts.
11:33:20 A.M.	23.09.2019	Police personnel ASI Sylwester Masih and HC Major Singh in civil dress, are seen entering car wash and car parking centre.
11:33:35 A.M.	23.09.2019	Police personnel constable Sham Masih and Constable Gurivnder Singh in civil dress are seen entering car wash and car parking centre.
11:34:04 A.M.	23.09.2019	Civil individual driving scooty is seen entering car washing centre, for getting his scooty washed.
11:37:53 A.M.	23.09.2019	One Civil individual who was driving scooty, is seen driving out the car from the main gate of car wash and car parking centre, which was earlier parked in the side of car wash and car parking centre.
11:38:21 AM	23.09.2019	Civilian driving scooty is seen driving out car from main gate of car wash and car parking centre.
11:38.42 AM	23.09.2019	Kuldeep Singh and police constable Harjant Singh in civil dress, is seen entering car washing and car parking centre.
11:40:54 AM	23.09.2019	One White coloured Swift desire no. PB 09 A.C 2976, is seen entering the car washing and car parking centre.
11:42:46 AM	23.09.2019	The worker of car wash and car parking centre is seen closing main gate of car washing and parking centre On instruction of police personnel in civilian dress, who was already inside the car washing centre.
11:43:15 AM	23.09.2019	02 young civilian driving R-15 motorcycle are seen exiting from car washing and car parking centre.

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11:43:45 AM	23.09.2019	Police personnel in civil dress after closing main gate of car wash and car parking centre, again went inside towards car wash and car parking centre.
11:44:52 AM	23.09.2019	01 civilian Sikh man talking on mobile phone while driving white colored scooty, is seen entering the main gate of car wash and car parking center
11:47:23 AM	23.09.2019	01 police employee in civil dress, is seen exiting from small gate of main gate of car washing and car parkingcenter.
11:49:25 AM to 11:50:08 AM	23.09.2019	During this time screen of camera turns black due to which nothing is visible.

The details of the recordings of camera (Video clip 02) Cam- 02- installed inside the car washing and car parking center which shows the office of car wash and car parking area.

Time	Date	Contents of CCTV Footage
11:33:34 AM	23.09.2019	Police personnel ASI Sylwerster Masih and HC Major Singh in civil dress, are seen entering car wash and car parking center.
11:33:39 AM	23.09.2019	Police personnel Constable Sham Masih and constable Gurvinder Singh in civil dress, are seen entering car wash and car parking centre.
11:33:55 AM	23.09.2019	All four police personnels are seen entering office in car wash and carparking center.
11:39:07 AM	23.09.2019	Police personnel Kuldeep Singh and police constable Harjant Singh in civil dress, is seen entering car washing and car parking center.
11:39:19 AM	23.09.2019	Both police personnel in civil dress are seen entering office in car wash and car parking center.
11:39:51 AM	23.09.2019	One police personnel in civil dress is seen taking one civilian individual outside the office in car wash and car parking center, and then again goinginside.
11:41:00 AM	23.09.2019	One White colored Swift desire is seen entering the car washing and car parking center.
11:42:42 AM	23.09.2019	One police official in civil dress is seen entering and exit from the office inside the car wash and car parking center.
11:43:13 AM	23.09.2019	02 young civilian driving R-15 motorcycle are seen exiting from car washing and car parking center
11:44:04 AM	23.09.2019	The police officials in civil dress, which are seen coming out of the office, again go inside the office.
11:44:58 AM	23.09.2019	01 civilian Sikh man talking on mobile phone while driving white coloured scooty, is seen entering the main gate of car wash and car parkingcenter.
11:46:57 AM	23.09.2019	The police officials in civil dress is seen coming out of the office.
11:47:51 AM	23.09.2019	Worker of car wash and car parking centre are seen parking active scooty at side after washing it.

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11:49:24 AM to 11:49:41 AM	23.09.2019	During this time screen of the camera turns black, due to which nothing is visible.
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The details of the recording of CCTV camera (**Video clip 03**) **Cam-06-** installed outside the car wash and car parking center which shows the entry gate.

Time	Date	Content of CCTV Footage
11:33:20 AM	23.09.2019	Police personnel ASI Sylwester Masih and HC Major Singh in civil dress, are seen entering car wash and car parking center.
11:33:35 AM	23.09.2019	Police personnel Constable Sham Masih and constable Gurvinder Singh in civil dress, are seen entering car wash and car parking center
11:34:04 AM	23.09.2019	Civilian individual driving scooty is seen entering car washing center, for getting his scooty washed.
11:37:53 AM	23.09.2019	One Civilian individual who was driving scooty, is seen driving out the car from the car wash and car parking center, which was earlier parked at the side of car wash and car parking center.
11:38:21 AM	23.09.2019	Civilian driving scooty is seen driving out car from main gate of car wash and car parking center
11:38:42 AM	23.09.2019	Police personnel Kuldeep Singh and police constable Harjant Singh in civil dress, is seen entering car washing and car parking centerq.
11:40:00 AM	23.09.2019	This camera shuts down.

8. That in compliance of Hon'ble court it is respectfully submitted that from the above said facts, report and material evidences available on record, specially in regard to the CCTV footage, the STF police personal consisting ASI Sylwaster Masih, ASI Kuldeep Singh No. 1325/KPT, HC Major Singh No. 834/KPT, CT Sham Masih 4/244, CT Gurwinder Singh 80/583 and CT Harjant Singh are seen in civil dress, who are further seen entering the car wash/car parking centre of the petitioner situated at Mohalla Malkana PS City Kapurthala. However, there is nothing seen in the CCTV footage, that those police personnel are taking away the petitioner Kuldeep Singh out of his car wash/car parking centre.”

The aforesaid information given by the SSP, to say the least, is compelling enough to raise concerns for any citizen of the country. The individuals responsible for upholding the law and safeguarding citizens' rights have themselves transformed into aggressors and transgressors through the blatant misuse of police powers. It was on this basis that the Court had taken note of the inconsistencies between the First Information Report (FIR) and the contents of the affidavit.

7. Co-ordinate Bench of this Court, then seized of the matter, noted in an earlier order dated May 31, 2022, that the learned State counsel had informed them that a Special Investigation Team (SIT) had been established to investigate the entire issue of misconduct

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by police officials. However, during today's court proceedings, in response to a query from the Court, the learned State counsel, acting under instructions from ASI Harparshad, is unable to provide any information regarding actual constitution/composition of an SIT and/or the progress of the SIT's investigation. In light of this, it appears that despite the assurance that an SIT had been formed, no concrete steps were actually taken in this regard.

8. As an upshot, the petition is disposed of with a directive to respondent No.2 to constitute a Special Investigation Team, to be headed by the DIG, Jalandhar, Senior Superintendent of Police, Kapurthala and one Deputy Superintendent of Police from District Jalandhar. He shall also ensure to register a separate FIR against the erring officials based on the affidavit/information provided by the Sh. Raj Bachan Singh Sindhu in his affidavit dated 30.05.2022 (para 7 thereof). SIT shall investigate as to why police officials went to the petitioner's workshop in the morning at 11:00/11:30 a.m. on 23.09.2019, why this movement to the place of petitioner was not disclosed in the subsequent FIR registered in the evening on the same day, and whether they obtained permission from their superiors for this morning visit and recorded that movement in the DDR. SIT shall also file monthly progress report of the investigation before this Court. Registry of this Court to ensure compliance thereof.

9. Before parting, I may hasten to add there that as far as the FIR against petitioner is concerned, law will take its own course, but in order the balance equities and in the larger interest of justice, it is deemed appropriate that till the SIT, as aforesaid, concludes its investigation and submits a final report, as per directions given by this Court, further proceedings arising out of FIR No.280 dated 23.09.2019, wherein petitioner is an accused, shall remain stayed.

10. Any pending application(s), if any, shall also be considered disposed of.

(ARUN MONGA)
JUDGE

October 06, 2023

mahavir

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No