

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M- 52461-2019

Date of Decision: 27.04.2023

Inderjit Singh

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. RS Bains, Sr.Advocate with
Ms. Aarushi Garg, Advocate for the petitioner

Mr. Mohit Chaudhary, AAG Punjab

Sandeep Moudgil, J.

1. The petitioner has invoked the jurisdiction under Section 482 Cr.P.C., seeking quashing of order dated 05.09.2019 (Annexure P5) passed by Addl.Sessions Judge-cum-Special Judge, SAS Nagar Mohali whereby the application dated 03.08.2017 (Annexure P2) filed by the petitioner in FIR No.01 dated 12.06.2017 (Annexure P1) registered under Sections 59(2)(b), 21, 22 of NDPS Act, Sections 218, 466, 471, 120-B, 384, 482 of IPC and Section 25 of Arms Act at Police Station Special Task Force, District SAS Nagar for directions for extracting second samples from the alleged seized articles (alleged to be heroin and smack) and for sending the second samples to the CFSL, New Delhi, for its examination and for submitting its report before the trial court, has been dismissed. Further a direction is sought for extracting/drawing second samples from the alleged seized articles and for sending the same to CFSL, New Delhi for its examination and for submitting its report before the trial court.

2. This petition involves peculiar question of law, as to whether the re-testing of sample by collecting 2nd sample merely on the basis of unfounded apprehension is permissible under NDPS Act?

3. The brief facts of the case are that as per the reliable information given to the office of ADGP, STF, Punjab, that he had heard in district Tarn Taran that an enquiry was being conducted by STF regarding cases registered by the petitioner-Inderjit Singh, former Inspector CIA remained posted at Tarn Taran. The source stated that he was aware of the activity and role of petitioner who had worked in Tarn Taran for a long period and further informed that he was involved in nefarious activities with smugglers of narcotics. The source further stated that the petitioner-Inderjit Singh during the year 2013 and 2014 played a big role in providing protection to the said smugglers as well as abetting the smugglers of narcotics operating in his jurisdiction including while they were in his custody. It was also revealed that the petitioner-Inderjit Singh, himself has also been organizing smuggling and trafficking of narcotics through various associates. Inspector Inderjit Singh has made recoveries of narcotics but the said recoveries were made with the motive to obtain illegal gratification from the smugglers in his custody and on the promise of helping said smugglers in the cases. The shield of recoveries has been used by Inspector Inderjit Singh to participate in the drug trade.

4. Upon receipt of the said information and on analysis of cases in which the accused gets acquittal despite of having commercial quantity of narcotics, the office of IGP, Border Zone has been asked to enquire some cases of district Tarn Taran and called for the record. Vide Memo No.1128-33/PA/ADGP/STF Dated 28.04.2017, the STF Headquarters had initiated the

process of analysis of cases registered in various Police Stations of the State of Punjab in which commercial quantity of narcotics were recovered during the period of last five years and it has been found that in certain important cases of large recoveries of narcotics involving the smugglers, the accused were acquitted due to failure of prosecution to prove the commission of offence as also the investigation was entrusted to a substantive rank Head Constable instead of a higher rank official as required by law in FIR No. 155 dated 1.10.2013 U/s 21/29 NDPS Act, 1985 P.S. Sarhali, District Tarn Taran. It was found that the accused in the said case were acquitted by the Trial Court on 23.3.2017 and one of the grounds was that the petitioner-Inderjit Singh who held the substantive rank of Head Constable at the time of registration of case thereby he was not competent to investigate the case as per provisions of the NDPS Act, 1985. According to the State Government Notification NO. S.O. 33/C.A. 61/85/SS 42 and 67/87 dated 3rd, September, 1987, issued under the provisions of the N.D.P.S. Act, 1985, the officer of rank of Assistant Sub Inspector of Police is the competent officer to exercise the powers and perform the duties specified in sections 42 and 67 of NDPS Act, within the area of their respective jurisdiction. It has been clarified by a number of orders of the police department as well as court judgments that only officers holding substantive rank of ASI and above are competent to investigate cases registered under the provision of the NDPS Act, 1985.

5. Therefore, a detailed report was sought from the IGP/Border Zone, Amritsar by the office of ADGP, STF, Punjab. In the report dated 09.06.2017, it was mentioned that the responsibility of acquittal of the accused is of the petitioner and Jaswant Singh, former DSP, Investigation.

6. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, who was working in the Punjab Police as Inspector and also got commendation and appreciation certificates from Punjab Police. He was even awarded Gallantry Award by the President of India for his meritorious services during the terrorism period in Punjab. Thereafter, the petitioner had also apprehended/arrested number of drug smugglers/peddlers in the State of Punjab and had effected highest number of recoveries of drugs. Besides, he also arrested well known synthetic drug accused namely, Raja Kandola and effected recovery of “ICE” worth Rs.200 Crores from him.

7. It is also urged on behalf of the petitioner that the Enforcement Directorate has also seized the properties worth hundreds of crores of rupees of Raja Kandola. Further, on the efforts of petitioner, the case of another police official, Jagdish Bhola, came into light and during investigation of the same, drug scam of Rs.6000 crore was exposed. He further contends that ultimately, Jagdish Bhola and his accomplices were convicted by the trial court. The petitioner is also stated to have exposed the nexus between the drug smugglers and employees/officials of Chemical Laboratory, Kharar; he arrested/apprehended the main drug smugglers/peddlers in the State of Punjab, who are very powerful and influential persons and registered hundred of cases under NDPS Act and had effected huge recoveries of Narcotic Drugs. In most of the case the accused persons were convicted.

8. Learned counsel submitted that the petitioner has been implicated and arrested in the present false FIR No.01 dated 12.06.2017 just out of vengeance at the behest of certain police officials and the alleged

recovery has been conspired against the petitioner, as in fact this FIR, the petitioner was complainant/informant and had partly investigated three other FIRs wherein the accused persons were acquitted by the same Presiding Officer. It is urged that the State did not prefer to file any criminal appeal against the acquittal of the above-said accused persons and it was the petitioner, who being the informant/complainant, challenged the acquittal of the above persons before this Court. The said criminal appeals (Annexure P6) have been admitted by this Court. It is also highlighted that out of 100 FIRs/cases under NDPS Act, investigated by the petitioner, accused persons in 35 FIRs/cases have been convicted.

9. Learned counsel also submitted that despite court orders, the STF, Mohali/investigating officer in the present FIR No.01 dated 12.06.21017, has tampered/fabricated/destroyed the zimmies and CCTV footage which were ordered to be preserved vide order dated 22.06.2017 by CJM, Mohali claiming that the said CCTV footage would falsify the story of the investigating agency/STF as the petitioner was never inside the police quarter at Phagwara from where the alleged recovery of alleged heroine and smack was shown to have been effected.

10. The petitioner moved an application dated 03.08.2017 before the trial court for direction to extract the second sample from the alleged seized articles, however, the trial Court vide order dated 05.09.2019 had dismissed the said application dated 03.08.2017. As such, the present petition has been filed by the petitioner assailing the order dated 05.09.2019. It has been alleged in the application as under:-

“1. That the applicant-accused Inderjit Singh has been implicated in the resent false case / FIR No. 1 and the alleged recovery has been planted against the applicant, in a well planned criminal conspiracy, to ruin his service career and to help the drug lords / smugglers who are behind the bars.

2. That the applicant was serving in Punjab Police and was posted at various Police Stations of Punjab during his service period and got number of commendation and appreciation certificates from Punjab Police and was also awarded gallantry award by the President of India for his meritorious services, during the terrorism / militancy period in Punjab and thereafter. The applicant had apprehended / arrested number of drug smugglers / peddlers in the State of Punjab and effected highest number of recoveries of Narcotics Drugs and Psychotropic Substances, in the State of Punjab. The applicant has also arrested world famous synthetic drug lord namely Raja Kandola and effected recovery of "Ice Drug" worth Rs. 200 Crores from him. The Enforcement Directorate has also seized the properties worth crores of rupees of Raja Kandola. Further, on the inputs of the applicant, the case of drug lord Jagdish Bhola came into light and during investigation of the same, drug scam of Rs. 5000 crore was exposed and this case was investigated by the Punjab Police as well as Enforcement Directorate, in which, Jagdish Bhola and his about 129 accomplices / associates are facing trial before learned Trial Court.

3. That the applicant has also exposed the nexus between the drug smugglers and the doctors / employees / officials of Chemical Laboratory, Kharar, in which the drug smugglers dealing at higher scale / level used to get the samples of Narcotic Drugs and Psychotropic Substances failed by giving huge bribe to the doctors / employees / officials of Chemical Laboratory, Kharar through the agents of the doctors / employees of Chemical Laboratory, Kharar. In this regard, an FIR No. 290 dated 29.10.2013 u/s 29 of NDPS Act and Section 7, 13 of Prevention of Corruption Act was registered at Police Station City Tarn Taran, District Tarn Taran, against Dr. Rajwinder Pal Singh, Assistant Chemical Examiner, Lekh Raj, Senior Laboratory Technician, R.K. Mishra, Superintendent, Darshan Singh and other doctors, officials and employees of Chemical Laboratory, Kharar and some other accused persons. The copy of the above said FIR No. 290 dated 29.10.2013 is annexed herewith as Annexure -. A-1. The applicant was part of

the investigation team headed by DSP Dalit Singh Dillon in the above said FIR No. 290, and at that time the applicant was posted as Incharge, CIA Staff, Tarn Taran. During investigation of the above said case / FIR No. 290, number of officials of Chemical Laboratory, Kharar were arrested and they are facing trial in the above said FIR No.290

4. That since the applicant-accused Inderjit Singh has been implicated in the present false case / FIR No. 1 and the alleged recovery has been planted upon the applicant, in a well planned criminal conspiracy, to ruin his service career and to help the drug lords / smugglers who are behind the bars, many police officials in the department / Punjab police feels that the applicant has been victimized and falsely implicated in the present false case at the instances of the above said drug lords against whom the applicant got registered FIRs under NDPS Act and investigated it and arrested them who are now facing trial, and the applicant has been implicated in the present case in order to help those drug smugglers, and due to the above said reasons, some members of the present STF team / investigating team have sympathy with the applicant and due to that sympathy, some reliable official of the present ST team / investigation team, has now informed the applicant that the alleged seized articles (alleged to be heroine and smack) alleged to be recovered from the applicant / planted upon the applicant is not drugs / narcotic substance and rather the same is wastage / medicine powder / ordinary powder and the investigating officer of the present case has put / planted a very thin layer of drugs / narcotics, on the top of the said powder, after putting the said powder in both the plastic containers, in order to take samples and to obtain positive result from Chemical Laboratory, and the applicant was further informed that except the said thin layer on the top of the powder contained in both the plastic containers, the rest of the alleged article is an ordinary powder / wastage / medicine powder and not drugs / narcotic substance. It is therefore, necessary to give directions for extracting second samples / re-sampling from the alleged seized articles (alleged to be heroine and smack) and the same needs to be send to Central Forensic Science Laboratory, New Delhi for its examination and for submitting report before this Hon'ble Court, for fair and impartial report and trial in the present case and to provide justice to the applicant.

5. *That since the applicant has exposed the above said scam / nexus between the drug smugglers and the doctors, officials / employees of Chemical Laboratory, Kharar and was member of the investigation team in the above said FIR No. 290 in which, number of officials of Chemical Laboratory, Kharar were arrested and they are facing trial in the above said FIR No. 290, the applicant is not expecting a fair and impartial report from the Chemical Laboratory Kharar, of the samples taken on 12.06.2017 of the alleged seized articles (alleged to be heroine and smack), in the present case / FIR No. 1, for sending it to Chemical Laboratory, Kharar for its examination. In these circumstances, the applicant is having a reasonable apprehension that the officials of Chemical Laboratory, Kharar will not give a fair and impartial report and the officials of Chemical Laboratory, Kharar will submit a biased / false report against the applicant due to the exposure of the above said scam in Chemical Laboratory, Kharar, by the applicant and due to registration of the above said FIR No. 290 (Annexure A-1) against the officials of Chemical Laboratory, Kharar. It is also pertinent to mention here that since the STF / Investigating Agency have influence on the Forensic Science Laboratories / Chemical Examiners which are situated within the State of Punjab and which are under the control of Punjab Government, the applicant is having a reasonable apprehension that the officials of Chemical Laboratories / Forensic Science Laboratories which are situated within the State of Puniab and which are under the control of Punjab Government will not give a fair and impartial report and will submit a biased / false report against the applicant, under the influence / pressure of the STF / Investigating Agency.*

6. *That since the applicant had apprehended / arrested the main drug smugglers / peddlers in the State of Punjab, who are very powerful and influential persons, and registered hundreds of cases under NDPS Act and effected huge recoveries of Narcotic Drugs and Psychotropic Substances from the drug smugglers / peddlers, and in most of those cases accused persons were convicted, and the applicant has also exposed the above said nexus / scam in Chemical Laboratory Kharar, the applicant has been implicated in the present false case / FIR No. 1 and the alleged recovery has been planted against the applicant, in a well planned criminal conspiracy, to ruin his service career and to help the drug lords / smugglers who are behind the bars.*

7. *That the CCTV footage which has already been ordered to be preserved vide order dated 22.06.2017 passed by the Court of learned Chief Judicial Magistrate, Mohali, in the present case, proves that the story of the investigating agency / ST regarding taking applicant to the place of alleged recovery of alleged heroine and smack from alleged police quarter at Phagwara and the alleged recovery, are false and concocted, as the CCTV footage itself would show that the applicant was never taken to/ inside the alleged police quarter at Phagwara from where the alleged recovery is shown to be effected, in the police papers. It is also pertinent to mention here that as per the rules, only one quarter is allotted to official of Punjab Police. The applicant has been allotted one quarter i.e. Quarter No. 299, Police Lines, Jalandhar since year 2006, and he has no concern with the alleged police quarter at Phagwara.*

8. *That it is settled law that on the application of the accused, re-sampling / re-testing of samples can be done and directions can be issued for extracting the second samples from the alleged seized articles and for sending the second samples to the Central Forensic Science Laboratory (CFSL), New Delhi, for its examination and for submitting its report before the trial Court.”*

11. In these circumstances, the petitioner having reasonable apprehension that the officials of the Chemical Laboratory Kharar will not give a fair and impartial report and the officials of Chemical Laboratory Kharar will submit a biased/false report against the petitioner due to the exposure of the abovesaid scam in the Chemical Laboratory, Kharar and also that the STF/Investigating Agency have influence on the FSL/Chemical Examiners which are situated with the State of Punjab and which are under the control of Punjab government.

12. Learned counsel has relied upon the laws laid down in cases of Thanna Singh Vs. Central Bureau Of Narcotic Criminal Case No.1640 of 2010 decided on 23.01.2013, Nihal Khan Vs. State (Govt of NCT of Delhi) Crl. Rev. P. No.653 of 2006 decided on 3.01.2007, Anil Kumar Vs. Narcotics

Control Bureau, Criminal Revision No. 171 of 2008 decided on 27.03.2008, Directorate of Revenue Intelligence Vs. Abhijit Prabhakar Konduskar and other 2015(1) DC(Narcotics) 242, Amar Singh Vs. State of Punjab Criminal Revision petition No.34990-M of 2002 decided on 11.07.2003, Sandeep kaur alias Mandeep Kaur Vs. State of Punjab Crl. Misc No.M-22002 of 2012(O&M) decided on 19.11.2014 and Amarjit Singh Vs. State of Punjab Criminal Appeal No.283-DB of 2007 decided on 30.03.2011.

13. Reply has been filed by the State dated 24.05.2022 wherein it has been alleged that now after the receipt of Chemical Examiner Report from the Forensic Science Laboratory, SAS Nagar, Mohali, the petitioner has filed the present application by concocting a false story asking to extract second sample/re-test and same be sent to the CFSL, New Delhi. As per case laws cited by the petitioner, there is no such provision in the law for re-testing of the sample and further the petitioner cannot dictate the Court to send samples for testing to his choice of laboratory.

14. Learned State counsel has argued that in the NDPS Act, there is no provision for sending the second sample to the Chemical Examiner. He has referred to the judgment of Hon'ble Supreme Court in the case of **Thana Singh vs Central Bureau of Narcotics, 2013(1) RCR (Criminal) 861 SC**, Division Bench judgment of this Court in **Amarjit Singh vs State of Punjab 2013(4) RCR (Criminal) 524 (P&H) (DB)**.

15. I have heard learned counsel for the parties and gone through the case file.

16. The trial court has rightly observed that an accused facing trial under the provisions of NDPS Act has no right to ask the Court to order re-

testing of the case property after drawing a sample from the remaining case property inasmuch as Section 293 of the Code of Criminal Procedure has made the report of the forensic science experts admissible in evidence. In **Thana Singh's** case (*supra*), the Apex Court has held that any requests as to re-testing/re-sampling shall not be entertained under the Narcotic Drugs and Psychotropic Substances Act as a matter of course and these may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the court below.

17. There is no dispute about the *ratio* of law laid down in **Amar Singh's** case (*supra*), **Nihal Khan's** case (*supra*) and **Deepak's** case (*supra*) relied upon by the counsel for the petitioner but the said rulings are not applicable to the facts of the present case as in the case in hand, no extraneous exceptional circumstances have been pointed out except mere apprehension which is totally unfounded and concoction of petitioner own mind, by the learned counsel for sending the samples for re-testing.

18. This Court is fully convinced to conclude that in fact the application seeking direction for collecting 2nd sample and sending the same for re-testing is only a devise to delay the trial proceedings to divert the attention of the whole prosecution case. None of the apprehension averred in the petition and also before this Court during the course of hearing is supported by any cogent material.

19. Moreover, NDPS Act also does not confer any right upon the accused to send another representative sample of the contraband to the same or other public analyst for analysis and report.

20. Furthermore, the court below has rightly in its wisdom has held that there is no necessity for re-testing on the ground as given in the application as there is nothing on the record from which it can be held that the report of FSL is vague or any ambiguity is there. It is also not the case where the first sample sent for testing purpose was destroyed or its quantity was insufficient for analysis purposes. As such, no ground is made out to send the second sample for chemical analysis.

21 Dismissed.

27.04.2023

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No