

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15605-2024 (O&M)
Date of decision: 05.04.2024

Naveen Dabas @ Bali

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Ankit Karna, Mr. Azad & Ms. Kritika Singh, Advocates
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) for quashing of the impugned order dated 16.03.2024 (P-2), passed by learned Judicial Magistrate 1st Class, Rohtak (*for short 'JMIC'*), whereby an application of prosecution was allowed and petitioner was ordered to be produced by the Superintendent, Central Jail-2, Tihar, New Delhi on production warrant.

(2) For reference, impugned order dated 16.03.2024 (P-2) reads as under:-

*“Case received by transfer. It be checked and registered.
Accused not produced before the court by the authorities of
Tihar Jail, Delhi. Perusal of file shows that production*

warrants of accused were issued thrice (i.e. on 08.01.2024, 13.01.2024 and 17.02.2024) but the accused has not been produced before the court till date.

PSI Krishan Kumar has appeared and moved an application for issuing production warrants of accused Naveen Bali. Heard and allowed. Superintendent, Central Jail-2, Tihar, New Delhi is strictly directed to produce the said accused on 28.03.2024 in the abovesaid case as the non-production of the accused is causing unnecessary delay in the investigation of this case. The non-production of the accused on the date fixed shall be viewed seriously. The Officer of this case is also directed to co-ordinate with the Superintendent of Police.”

(3) Reply by way of an affidavit dated 04.04.2024 of Sh. Rajeev, DSP, Kalanaur, District Rohtak, along with Annexures R-1 to R-3, has been filed. The same is taken on record. Copy thereof supplied to the opposite side.

(4) Solitary contention raised by learned Counsel for the petitioner is that in terms of Section 267 Cr.P.C., it was obligatory upon learned JMIC to record its satisfaction that presence of petitioner is required for investigation in FIR No.217 dated 30.09.2022, under Sections 307, 34, 120-B, 201, IPC; Sections 25 & 27 of the Arms Act, Police Station Bahu Akbarpur, District Rohtak while issuing the impugned production warrant; but there is not even a whisper discernible in this regard.

(5) On the other hand, learned State Counsel in his usual fairness although acknowledged that no reason has been assigned by learned JMIC; but still defending the impugned order on the premise that petitioner is an

accused in the aforementioned FIR and he was nominated by co-accused on the basis of disclosure made during investigation.

(6) Heard learned Counsel for the parties and perused the paper-book.

(7) Powers of Criminal Court to issue production warrant in such like matters can be exercised under Section 267 of the Cr.P.C. and for reference, the relevant part of the same reads as under:-

“267. Power to require attendance of prisoners.

(1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.”

(8) A perusal of the aforesaid extract, *inter alia*, reveals that whenever, in the course of an inquiry, trial or **other proceeding** under this Code, *it appears to a criminal Court that a person confined or detained in a prison should be brought before the Court for the purpose of **any proceedings** against him, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court **for the purpose of such proceeding.***

(9) Also noteworthy that provisions of Section 267 Cr.P.C. came up for consideration before Hon'ble Full Bench of Rajasthan High Court, reported as "**2005 SCC OnLine Raj 317**", and the following question of law was referred for adjudication:-

"Whether production warrant requiring attendance of the prisoner lodged in the judicial custody in one case can be issued under Section 267 Cr.P.C. for the purpose of investigation in another case and whether the expression "other proceeding" and "for the purpose of any proceeding" used in Section 267(1) and 267(1)(a) respectively would include "investigation" as defined in Section 2(h) Cr.P.C.?"

The Full Bench after discussing the entire case law answered the reference in the following manner:-

"The police can seek permission to remove an accused from judicial custody to police custody for completion of investigation in another case and for this purpose, production warrant under Section 267 Cr.P.C. can be issued. The expression "other proceeding" used in Section 267(1) and "for the purpose of any proceedings" occurring in Section 267(1)(a) would include "investigation" as defined under Section 2(h) Cr.P.C."

(10) In view of the above legal position, there remains no doubt that learned JMIC was fully empowered to issue the production warrant if it appears that petitioner is required for the purpose of investigation in FIR No.217 dated 30.09.2022.

(11) However, from bare perusal of the impugned order, extracted in para 2 (*supra*), it is nowhere discernible that petitioner is an accused in FIR

No.217 dated 30.09.2022 and/or that he is required for investigation in that case; rather the impugned order is completely silent in this regard.

Since issuance of production warrant entails serious consequences; therefore, it was obligatory for the learned JMIC to pass the order impugned in consonance with Section 267 of the Cr.P.C.

(12) Although, learned State Counsel tried to justify the impugned order while making reference to the application moved by the prosecution before learned JMIC; but that will not serve the purpose for the simple reason that it is for the Court concerned to apply its mind in terms of Section 267 of the Cr.P.C. and then only to pass an order for production warrant, if thinks appropriate.

(13) In view of the above discussions, this Court is of the considered opinion that the impugned order is indefensible in law; hence, liable to be quashed.

(14) Consequently, petition is allowed; impugned order dated 16.03.2024 (P-2) is quashed and set aside.

(15) Liberty is granted to the prosecution to move an application afresh, if so desired and the same be considered in accordance with law, expeditiously, by learned JMIC.

(16) Pending application(s), if any, shall also stand disposed off.

5th April, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes