

208

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:047053
CRM-M-22158-2023 (O&M)
DECIDED ON: 04.04.2024

RANJIT GOSWAMI

....PETITIONER

VERSUS

STATE OF PUNJAB

....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Suresh Kumar Jindal, Advocate for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.131, dated 01.10.2022, under Section 22(c) of NDPS Act, 1985 (Section 25 of NDPS Act, 1985 has been added later on), registered at Police Station Khamano, District Fatehgarh Sahib.

2. It is pertinent to record here that during the investigation, Section 25 of NDPS Act, 1985 has been added therein.

3. Mr. Vijay Kumar Jindal, Sr. Advocate for the petitioner asserts that in fact actually the petitioner was abducted by the police officials of District Fatehgarh Sahib on 30.09.2022 from Wazirabad, New Delhi, while he was on his way to his home at Sonipat in his car make KIA, white colour, registration No.HR10-AJ-3791. The said abduction has taken place from his shop at New Delhi and the alleged recovery of contraband containing 2,37,000 tablets of Alprazolam and 14,400 capsules of Pyeevon Spas Plus was planted upon the petitioner on the pretext that he has no licence or permit for the said

contraband. The petitioner has supported the aforesaid assertions on the strength of certain facts such as he was having valid and operating FASTAG to make payment at relevant toll plazas and when he on his way to Sonipat, reached near Wazirabad, New Delhi in evening on 30.09.2022, a group of people got stopped his car and abducted him along with the vehicle as they barged into the car of the petitioner and took over the steering. While driving down towards Ambala Highway that group of persons disclosed their identity as police officials from Crime Branch, District Fatehgarh Sahib, Punjab. On the way, they scrapped the FASTAG affixed on the windscreen and gave double of the toll prize at Murthal, Panipat, Karnal and Ghaggar toll plazas though luckily the petitioner have those receipts, as the alleged police officials kept them in the dashboard of the car. He has further narrated the chain of travel and crossing of toll plazas with timing during his abduction from Wazirabad, New Delhi to Police Station Fatehgarh Sahib, where he states to have been brought in the wee hours of 01.10.2022 after they closed the Ghaggar toll plaza at 00:36 hours, which is on record at Annexure P-3, as is evident from the receipts of payment of the toll plazas. It is the case set forth on behalf of the petitioner that a clever device has been adopted by the Punjab police officials firstly to hide their identity at all the toll plazas but they can be easily identified from the CCTVs installed at these toll plazas.

4. Mr. Jindal, Sr. Advocate for the petitioner further vehemently makes an attempt to highlight the high-handedness of the police officials asserting that the petitioner was made to stay confined in a room and on 01.10.2022 at the dawn, he was taken to a place unknown to him and planted the alleged recovery of contraband with the registration of instant FIR, which is totally false.

5. To support his contentions, a pendrive has also been placed on record of this Court at Annexure P-4. The order-sheets of the case file would depict that the case was being heard on various dates and on 26.07.2023, a status report from the State was called upon.

6. In compliance thereof, an affidavit of Raminder Singh, PPS, Deputy Superintendent of Police, Khamano, District Fatehgarh Sahib, Punjab was filed dated 07.08.2023 but finding the same to be improper, learned State counsel sought another adjournment to file a detailed para-wise reply after examining the video footage placed on record as Annexure P-4.

7. Accordingly, necessary reply was filed on 12.09.2023 by the State and the matter was fixed for further consideration on 05.12.2023.

8. Matter could not be taken up by the Co-ordinate Bench on the date fixed and was adjourned to 04.01.2024 and after hearing the case on 04.01.2024, I passed the order, which reads as under:-

“This is a glaring example of high handedness of the police officials, who was otherwise expected to enforce law and order but seems to be involved in violating the norms of law, as has been alleged by the petitioner at this stage naming ASI Gurmeet Singh of CIA Staff, ASI Satwinder Singh of CIA Staff, Swaran Singh, Amandeep Singh and Amarveer Singh, who are also stated to be of CIA Staff, who went all the way to Delhi, picked up the petitioner and took him to the Police Station Khamano in the car, which belongs to the son of the petitioner namely Sahil Goswami bearing Registration No.HR10-AJ-9791 make KIA, White Colour.

The petitioner has also placed on record the video clippings in the form of pendrive (Annexure P-4), which has been perused today in support of his above said assertion reflecting the above car crossing three Toll

Plaza's along with the toll receipts paid at Bhagan (Murthal) Toll Plaza, Panipat Elevated Highway, Karnal Toll Plaza and Ghaggar Toll Plaza. It can be seen in the video clippings that 4-5 persons are occupants therein.

It is also the case putforth by the petitioner that the said police officials gave double toll in cash, which were found lying in dashboard of the car subsequently when the car was taken on the superdari by the son of the petitioner.

On a query put to the learned State counsel, who on instructions from ASI Ranjeet Singh, is not in a position to justify the fact that what made the police officials to travel all the way to Delhi and picked up the petitioner at around 8:00 p.m. and thereafter travelled continuously, probably might have reached Khamano at about 00:00 a.m. on the intervening night of 30.09.2022 and 01.10.2022, whereby an FIR came to be registered, as is evident from Annexure P-1, on 01.10.2022 at 6:20 a.m. after a lapse of more than nine hours subsequent to having taken the petitioner into custody, if the version of the Investigating Officer is believed but the case of prosecution raises doubt as it has been averred that it was a chance recovery.

This Court is also amazed of said plea raised by learned State counsel qua chance recovery that too in Delhi, having no justification and admittedly there is no secret information on record, as has been conveyed to the State counsel by ASI Ranjeet Singh, who is present in Court with the case file.

Before proceedings further in the matter and to decide the prayer for regular bail under Section 439 Cr.P.C., this Court deems it appropriate to further get testified, if at all the action taken by the Investigating Agency is fair. In that endeavour direct the S.P./S.S.P., Fatehgarh Sahib, to produce the call details of the police officials namely ASI Gurmeet Singh of CIA Staff, ASI Satwinder Singh of CIA Staff, Swaran Singh, Amandeep

Singh and Amarveer Singh along with the location of mobile phones and also to place on record the details of mobile phones being used by the occupants of the offending vehicle bearing registration No. HR10-AJ-3791 en-route from Delhi to P.S. Khamano.

Learned State counsel seeks two weeks' time to do the needful. However, keeping in view the exercise which may be tedious one on that account, this Court grants the State three weeks' time to produce the said record. The said record and information shall be placed by way of an affidavit of Director General of Police, Punjab atleast two days prior to the next date of hearing.

Let the matter be posted further for consideration on 25.01.2024."

9. As directed by this Court, learned State counsel though filed an affidavit of Sarabjit Singh, PPS, Assistant Inspector General of Police, Litigation, Bureau of Investigation, Punjab dated 23.01.2024 but again found the same to be incomplete on the information sought by this Court and yet again another opportunity was prayed for which was granted while deferring the hearing to 14.02.2024.

10. Yet again, an affidavit of Sarabjit Singh, PPS, Assistant Inspector General of Police, Litigation, Bureau of Investigation, Punjab dated 13.02.2024 was filed asking for two weeks time to collect the evidence and any other incriminating material while referring to para No.9 of the said affidavit, which states as under:-

"That it is necessary to obtain better quality CCTV footage from NHAI. Therefore, letter has been issued to the Senior Superintendent of Police, Fatehgarh Sahib to make more efforts to obtain better quality CCTV footage. It is humbly prayed that two week's more time may kindly be granted to file affidavit of GP, Punjab, in compliance with order

dated 04.01.2024 passed by this Hon'ble Court in the aforesaid petition.”

11. This Court yet again left with no other option, deferred the hearing to 01.03.2024 and on the date fixed, the affidavit of Gaurav Yadav, IPS, Director General of Police, Punjab came to be filed and the counsel for the petitioner sought time to go through the same, which was furnished to Mr. Jindal, learned Senior Advocate for the petitioner in Court itself and to address the arguments, matter was ordered to be listed on 04.04.2024.

12. This Court has minutely scrutinized the said affidavit and particularly from para 5 onwards, whereby the details of location and the timing specifically at Bhagan Toll Plaza (Sonipat), Panipat Toll Plaza, Karnal Toll Plaza, Ghaggar Toll Plaza qua the mobile phones carried on by the persons named by the petitioner containing from para No.5 onwards, which clearly indicate that the named police officials have been travelling on the said route that too in very close proximity of the time alleged by the petitioner, these are namely Inspector Amarveer Singh No.80/BRT, SI Gurmeet Kumar No.36/FGS, SI Satwinder Singh No.86/FGS and C-2 Amandeep Singh No.18/FGS having a maximum variation of 7 to 13 minutes with the time of crossing at toll plazas within the car of the petitioner and that of official vehicle make Bolero, which has been tried to be explained by urging to be a coincidence alone vehemently by Mr. Rajiv Verma, Deputy Advocate General, Punjab.

13. Further reference has been made to FSL Report dated 31.01.2024 (Annexure R-1) [at page No.145 of the paper-book in para No.11(iii)] by Mr. Rajiv Verma, Deputy Advocate General, Punjab to argue that the CCTV footage are not original of the same but are the re-captured videos of monitor/display and the files are social media process video and, therefore, it

cannot be ascertained with conviction that it is the police officials named by the petitioner have abducted him in the petitioner's car itself followed by official car Bolero enroute daily to Khamano, Fatehgarh Sahib.

14. The custody certificate has also been produced which is taken on record qua the present petitioner Ranjit Goswami and a copy of which stands furnished to the learned counsel for the petitioner today in Court.

15. Be that as it may, after having scrutinizing the complete record and on the basis of status report dated 07.08.2023, reply dated 12.09.2023, affidavit dated 23.01.2024 and lastly the affidavit of Gaurav Yadav, IPS, Director General of Police, Punjab dated 01.03.2024, it can be easily inferred primarily on the basis of the fact that the petitioner's version qua abduction from Delhi to Khamano on 30.09.2022 at around 08:00 p.m. and taking him forcefully to Police Station Khamano, District Fatehgarh Sahib, Punjab on that very night (wee hours of 1.10.2022) has some corroboration and in close proximity with the record of mobile phone locations of the police officials named by him along with receipts of toll plazas whereby FASTAG sticker of petitioner's car was damaged who preferred to pay double of the amount at those barriers which is duly supported by the receipts at Annexure P-3 as well as CCTV Footage (Annexure P-4).

16. Before parting with this order, this Court would like to record that though the quantity of contraband alleged to have been recovered is on a higher side but the circumstances raises a finger of serious doubts in the prosecution story inasmuch as multiple disputed facts including the date and time of taking the petitioner into actual custody by the police which is controverted to say that he was actually abducted from Delhi one day prior to showing his date of arrest, have come on record which needs to be examined

by leading evidence before the trial Court. The petitioner has already incarcerated for a period of 01 year 05 months and 29 days in custody, as is evident from custody certificate dated 03.04.2024 issued by the Deputy Superintendent, New District Jail Nabha further depicting that the petitioner is not involved in any other offence whatsoever clearly indicating that he is not a habitual offender. The trial is bound to take long time inasmuch it has not yet commenced and on that account, petitioner cannot be detained behind bars for an indefinite period. Otherwise, in doing so, it would tantamount to violation of Article 21 of the Constitution of India which also provides for a right to speedy trial even to an accused as is the mandate laid down in “***Dataram Singh vs. State of Uttar Pradesh & Anr.***”, 2018(2) R.C.R. (Criminal) 131. Even otherwise, an undisputed judicial precedent is also to be borne in mind that “bail is a rule” and “jail is an exception”.

17. In the light of aforesaid discussion and the sequence of events as unfolded before this Court, the petition is allowed and the petitioner is directed to be released on regular bail on his furnishing bail and surety bonds to the satisfaction of trial Court/Duty Magistrate, concerned.

18. However, it is made clear that anything stated hereinabove shall not be construed as an expression of opinion on the merits of the case.

(SANDEEP MOUDGIL)
JUDGE

04.04.2024

Poonam Negi

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No