



CRM-M-31333-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(205)

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Date of Decision : 08.11.2024

Sahid @ Kala ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Nafees Ahmad Khan, Advocate
for the petitioner.

Mr. Rajesh Gaur, Addl. AG, Haryana.

KULDEEP TIWARI, J.(ORAL)

1. This Court, on dated 04.07.2024, had passed the hereinafter
extracted order, upon the instant petition:-

“1. Through the instant petition, as instituted under
Section 438 of the Cr.P.C., the petitioner seeks the
concession of anticipatory bail, in case FIR No.439 dated
16.11.2022, under Section 11 of The Prevention of Cruelty
of Animals Act, 1960, Section 13(2) of The Haryana
Gauvansh Sanrakshan and Gausamvardhan Act, 2015,
Section 25 of the Arms Act, 1959, and, Sections 307, 120-B
of the IPC, registered at P.S. Hathin, District Palwal.

2. The learned counsel for the petitioner submits that the
present FIR has been registered on a complaint made by
one Vinod, who had not only made a
Nakabandi/barricading and conducted investigation, but,
also arrested some of the persons, who are alleged to be
involved in transportation of cows for the purpose of
slaughtering. He further submits that police is nowhere to
be seen in the entire picture, rather the entire exercise was



done by Vinod, who claims himself to be a Member of a Cow Protector's Group.

3. Notice of motion for 28.08.2024.

4. Mr. Rajesh Gaur, Addl. A.G., Haryana, accepts notice on behalf of respondent-State of Haryana, and, seeks some time to file reply to the instant petition

5. The learned State counsel is directed to, through filing a reply on affidavit of the Commissioner of Police, Gurugram, clarify as to how and in what capacity, a private individual could be allowed to make a Nakabandi/barricading at his own level and then arrest persons accused of transporting cows for slaughtering.

6. In the meantime, the petitioner is directed to join the investigation and to appear before the investigating agency, as and when called upon to do so. In the event of his arrest, he shall be admitted to interim bail on his furnishing bail bonds to the satisfaction of the Arresting/Investigating Officer. The petitioner shall abide by the terms and conditions as envisaged under Section 438(2) Cr.P.C.”

2. The compliance to the directions (supra), was not made by the respondent-State, which propelled this Court, to direct the Additional Director General of Police, Law and Order, Haryana, on dated 28.10.2024, to make compliance thereof. On dated 16.10.2024, again when the compliance of order dated 04.07.2024, was not made, this Court granted one more opportunity to the respondent-State. However, the respondent-State, was burdened with a cost of Rs.5,000/-. Thereupon, the cost was deposited, and the reply dated 23.10.2024, by way of an affidavit of Mr. Sanjay Kumar, IPS, Additional Director General of Police, Law and Order, Haryana, was filed on behalf of the respondent-State.



3. Perusal of the reply (supra), reveals that there is admission, on the part of the prosecution that there is no provision under the law, which, authorize a private person, to set-up/place a barricade, on a public road. The relevant extract of the reply (supra), reads as under :-

“5. That it is submitted that there is no provision under the Law which can authorize a private person to erect barricade(s) on the public roads. Section 73 of the Haryana Police Act, 2007 authorize the police authorities to reserve public place (s) and erect barrier. Section 73 of the Haryana Police Act, 2007 is reproduced as under:-

(1) The Superintendent of Police of a district may, by public notice, temporarily reserve for any public purpose, any street or other public place, and prohibit the public from entering the area so reserved, except on such conditions as may be specified.

(2) The Superintendent of Police of a district may authorize any police officer to erect barriers and other necessary structures on public roads and streets, to check vehicles or occupants thereof for violation of any legal provisions.

(3) In making such order, the Superintendent of Police of a district shall specify the necessary steps ensuring the safety of passers- by. Obstruction in police work. Unauthorized use of police uniform. Refusal to deliver up certificate etc. on ceasing to be police officers. False or misleading statements made to a police officer. Dereliction of duty by a police officer.

(4) The temporary structures shall be removed once the purpose for which they were installed is over.

8. That it is submitted that on special occasions/festivals like Holi, Diwali, New Year or night dominations, the traffic police issue special programmes specifying locations and timings of nakas with details of officials deputed with the orders of head of district police



concerned. Police personnel deputed on barrier(s) record their departure and arrival in DDR. Further, it is submitted that traffic police stations have been established in each district of the State. Inspectors and zonal officers also set up surprise nakas of short duration within their jurisdiction in due consultation with senior officers for implementation of traffic rules and checking of documents. At the same time Nakabandi is also carried out when there is information about movement of criminals or suspicious travelers on road who are required to be stopped and checked.

9. That it is submitted that instructions have been issued to all heads of Police units in the State vide this office memo No. 31017-50/L&O dated 18.09.2024 that all the SHOs be directed to instruct patrolling teams, ERVS, PCRs and riders staff to specifically ensure that no barricade/nakabandi by private person(s) is found erected on the road (s) and take immediate legal action against the offender (s), if any. It has also been directed that all heads of Police Units will give wide publicity through various modes to make common man aware that erecting barricades/nakabandi by private person(s) is illegal and strict legal action will be taken against the offenders. Further, public be apprised that they can inform police authorities about illegal barricades/nakabandi by making call on dial 112 (ERSS) and 100 number (District Control Room). A copy of the annexed as Annexure R-1.”

4. The reply (supra), further reflects that a general direction has been issued regarding setting-up of barricades, and doing nakabandi, on the road(s) by a private persons. The relevant extract of such direction, is extracted hereinafter :-

“Hon'ble Punjab and Haryana High Court in CRM-M No. 31333 of 2024 Sahid @ Kala Vs. State of Haryana has



sought report as in what capacity a private individual could be allowed to erect barricades/ do nakabandi on roads. It is clarified that police authorities are authorized to erect nakas/ barricades under section 73 of the Haryana Police Act, 2007 and proper mechanism has been formulated for erecting barricades/nakabandi.

However, there is no provision under any Law or Statute which authorize a private person to erect barricades/ do Nakabandi on road. All the SHOs be directed to instruct patrolling teams, ERSV, PCsR and rider staff to specifically ensure that no private person is allowed to erect barricade/ do nakabandi on the road (s) and immediate legal action against the offender (s) be ensured. It is also directed that all heads of Police Units shall give wide publicity through various modes to make public at large aware that erecting barricades/ doing nakabandi by private person is illegal and strict legal action will be taken against the offenders. Further, public be apprised that they can inform police authorities about illegal barricades/nakabandi by making call on dial 112 (ERSS) or through other modes of communication. Please ensure strict compliance.”

5. Further, the Director General of Police concerned, vide its executive order dated 21.10.2024, had directed the Deputy Commissioner of Police, Crime, Gurugram, to scrutinize the police file of case FIR No.439 dated 16.11.2022, under Section 11 of The Prevention of Cruelty of Animals Act, 1960, Section 13(2) of The Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015, Section 25 of the Arms Act, 1959, and, Sections 307, 120-B of the IPC, registered at P.S. Hathin, District Palwal, and to point out after going through the contents of the FIR, and all other relevant documents/materials available on the file, and after taking into consideration



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the material collected, and statements made by all the relevant persons, during the course of enquiry, in order to make out, as to what offence has been committed by the complainant, and his accomplice during entire course of incidence, from the moment of receiving information about accused persons, till handing them over to the Police, and thereafter, recommend necessary legal action.

6. With the intervention of this Court, the authorities concerned, further woke up and issued another direction, on dated 24.10.2024, regarding illegal activities of the some private individual, while apprehending the illegal transporters of cows. The relevant extract of such directions, reads as under :-

“2. In continuation to this office letter No. 31017-50/L&O dated 18.09.2024, it is intimated that it has come to notice that private persons are collecting information through various means/sources regarding illegal transportation of Gauvanshand after receiving the same they are also reportedly doing Nakabandion road(s), checking vehicles and chasing the suspicious vehicles instead of informing the Police. There are also few instances of apprehending the transporters of Gauvansh and keeping them in custody without justification instead of immediately handing them over to the Police authorities. In view of above, it is directed as under:-

1. All heads of Police Units shall give wide publicity through various modes as under:-

(i) To make public at large aware that as soon as any information is received by any private person regarding illegal transportation of Gauvansh, the information must be shared with Police and nearest authorities empowered to take action by calling Police Station or by making call on dial 112 (ERSS) or by any other mode of communication.



(ii) No Nakabandi by private persons is permitted under law and hence, they should not indulge in such act.

(iii) In case, any such offence is committed in presence of a private person, he will immediately inform the Police authorities, however, if the offender tries to abscond from the spot, the offender may be apprehended and handed over to the Police personnel when they reach at the spot.

2. Intelligence regarding illegal transportation of Gauvansh should be gathered through Gram Prahris, Police informers, NGOs and Gau Sevaks by Police itself so as to enable the Police to take appropriate action against illegal transportation of Gauvansh without need of intervention of private persons.

3. Nakabandi or any other illegal activities by private persons must be curbed with heavy hands as this is not allowed as per legal provisions as they exist today.

4. It must be ensured that appropriate legal action is taken against the persons indulging in such illegal activities.

Please ensure strict compliance.”

7. In view of the above, and the steps taken by the Director General of Police, Haryana, by circulating the apt executive directions, this Court records its satisfaction. However, the direction (supra), which has been issued by the Director General of Police, Haryana, shall be meticulously followed by all police functionaries, within the State of Haryana. Further, this Court expects that the Deputy Commissioner of Police, Gurugram, in pursuance of the directions dated 21.10.2024 (supra), would conduct the enquiry expeditiously, professionally, and in its right perspective, and thereupon, submit its report to the Director General of Police concerned, preferably within a period of four months from today.



8. So far as the issue regarding the plea, as raised by the learned counsel for the petitioner, through the instant petition is concerned, learned counsel for the State, after having instructions from the quarter concerned, informs this Court, that the petitioner has joined the investigation, and his further custodial interrogation is not required.

9. In view of the above, the hereinabove extracted interim order dated 04.07.2024, is hereby made absolute, subject to the hereinafter extracted conditions:-

- “(i) the petitioner(s) shall not commit an offence similar to the present offence;
- (ii) the petitioner(s) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- (iii) the petitioner(s) shall make himself/herself available for interrogation by a police officer as and when required.”

10. This order should not be treated as “blanket” order. It will not be read granting petitioner(s) indefinite protection from arrest. It shall be confined to the FIR mentioned ibid and will not operate in respect of any other incident that involves commission of an offence.

11. Needless to say that anything observed hereinabove shall not be construed to be an opinion on the merits of the case.

(KULDEEP TIWARI)
JUDGE

November 08, 2024
Manpreet

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