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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-16607-2023 (O&M)

Date of Decision: 28.01.2025

Balbir Singh**...Petitioner**

versus

State of Punjab and others**...Respondents**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Preetinder Singh Ahluwalia, Advocate,
Mr. Akash Deep Singh, Advocate
and Mr. Deepinder Singh Virk, Advocate
for the petitioner.

Mr. Manish Bansal, P.P., U.T. Chandigarh.

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Prateek Gupta, Advocate for respondent No.6-CBI

HARPREET SINGH BRAR J. (Oral)

1. This is the second petition filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking issuance of directions for reinvestigation of the case stemming from FIR No.153 dated 19.08.2021 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act') at Police Station Phase-I SAS Nagar, by the Central Bureau of Investigation or any other independent agency to ensure a free and fair investigation.

2. Briefly, the facts, as alleged, are that on 19.08.2021, around 8:20 PM, the petitioner was seen coming on a scooter make Activa bearing No. PB-65-G-8611. On seeing the police party at the check point at Amb Wala Park, the petitioner tried to turn away but was apprehended on the spot. On inspection, 360 tablets of Limotel (containing the salt-Diphenoxylate hydrochloride and atropine



sulphate), 450 tablets of Becalm, 1050 tablets of Anzilum (both containing the salt Alprazolam) and 100 tablets of Tramadol (containing the salt Tramadol hydrochloride) were recovered from him. Thereafter, a *ruqa* was sent by SI-Kulwant Singh, and FIR(supra) was registered.

3. Learned counsel for petitioner *inter alia* contends that the petitioner is a senior citizen and a licensed chemist. He is the sole proprietor of M/s Surindera Medicos, who has been in this business for the last 30 years. A perusal of the CCTV footage from the day would indicate that at about 7:37 PM, the petitioner parked his scooter, 30 meters from his shop. At 8:20 PM, a man in a blue T-shirt can be seen tampering with the same and trying to open the dickey of the scooter. Between 8:33 to 8:40 PM, four police officials can be seen around the scooter and subsequently, at 8:44 PM, the petitioner is seen to be taken away by the said police officials. In fact, the police personnel are seen to be trying to open the scooter and take things from it. The said footage was sent to the FSL and it was reported that the same is genuine and has not been tampered with (Annexure P-13). Vide order dated 08.03.2022 (Annexure P-14), this Court in the case bearing No. CRM-M-41963-2021, stayed the proceedings and called for a fresh report under Section 173(8) Cr.P.C. from an SIT. A three-member SIT was constituted on 01.06.2022, which gave its report on 09.01.2023 (Annexure P-16). However, the electronic evidence in the form of CCTV footage has not been considered by it, in a bid to shield its own officers. In fact, it has claimed that the scooter in the footage is white in colour, whereas the scooter apprehended is silver. Yet again, a perusal of the video would make it clear that the scooter is silver in colour. One of the police officials namely Faryad Ahmad, dressed in civil clothes, was also seen enquiring about the owner of the scooter bearing no. '8611.' This conduct of the investigating authority requires criminal prosecution of the erring officials under



Sections 58 and 59 of the NDPS Act. Learned counsel places reliance on the judgments rendered by the Hon'ble Supreme Court in *R.S. Sodhi vs. State of U.P. 1994 AIR SC 38*, *Rubabbuddin Sheikh vs. State of Gujarat (2010) 2 SCC 200* and *Disha vs. State of Gujarat 2011(3) R.C.R.(Criminal) 694*.

4. Leaned State counsel refers to the status report dated 19.07.2023 and submits that the petitioner has alleged that two persons namely Farehad Ahmad and Jugraj are seen on the CCTV footage. However, their faces are not properly recognizable. Further, there is a possibility that the petitioner was using two scooters with the same number plate. The same can only be ascertained on investigation.

5. Having heard the learned counsel for the parties and perusing the record with their able assistance, it transpires that the following order was passed by a Co-ordinate bench of this Court, in the petition bearing no. CRM-M-41963-2021, on 08.03.2022:

“CRM-M-41963-2021 (O&M)

Prayer in this petition is for transfer of investigation of case FIR No. 153 dated 19.08.2021, registered under Section 22 of the NDPS Act, 1985 at Police Station Phase-1, S.A.S. Nagar to some other independent investigating agency.

In view of the fact that now the report of the CFSL has come, which has proved the case of the petitioner, primarily that he has falsely been implicated in the present case, the Director, Bureau of Investigation, Punjab is directed to constitute an SIT and reverify the entire investigation conducted by the local police.

In case it is found that the petitioner has falsely been implicated, necessary disciplinary action will be taken against the erring police officials and a fresh report under Section 173(8) Cr.P.C. will be presented before the trial Court.

Let the needful be done within a period of three months from today and an affidavit in this regard be filed before this Court.

In the meantime, the trial Court shall not proceed in trial till the time, a fresh report under Section 173(8) Cr.P.C. is submitted by the SIT.

Disposed of.

A photocopy of this order be placed on the file of other connected case.”



6. Further, in the present petition, a Co-ordinate bench passed the following order on 10.04.2023:

“ This is second petition under Section 482 of Cr.P.C. seeking directions to respondent No.6 to reinvestigate the entire case relating to FIR No.153 dated 19.8.2021 registered under Sections 22 of NDPS Act at Police Station Phase-1, SAS Nagar.

Counsel for the petitioner inter alia contends that after registration of FIR, the petitioner filed CRM-M-41963-2021 with prayer for transfer of investigation of the case to some other independent investigating agency and in the said petition, direction was given to Director, Bureau of Investigation, Punjab to constitute a SIT and to re-verify the entire investigation conducted by the local police as photographs Annexures P-3 to P-8 therein which were taken from CCTV footage, were found to be authentic without any tampering by CFSL, Chandigarh and finally, the said petition was disposed of vide order dated 8.3.2022 (Annexure P-14).

Counsel for the petitioner further submits that in light of the aforesaid directions given by Coordinate Bench of this Court, SIT has submitted its fresh report under Section 173 (8) of Cr.P.C. with following observations :-

“3. In this the place of naka point is situated at a distance of around 800 meters from the petitioner's shop. The police party had held the petitioner Balbir Singh along with the drug tablets and has made recovery from him and the scooter which is visible in the CCTV footage, its number could not be read, but in the video a person is heard speaking about 8611 scooter, but in it, it is not clear that what is he talking about the scooter and about which scooter number is he talking, only incomplete number is heard in the video. If the petitioner's version is accepted also that at around 19:37:14 he comes on a building's parking's gate on scooter No.PB-65-G-8611 and leaves after parking the scooter, but as per the CFSL report the scooter's number could not be read and Balbir Singh was held by police party on the naka at around 08:20 p.m. Probably, Balbir Singh at around 19:37:14 might have came inside the building's parking's gate on some other scooter and after parking the scooter there, later on he might have been held on some other scooter No.PB-65-G-8611 at 08:20 p.m. by the police on the naka.

4. At around 20:44:22 a person wearing red and white color stripped t-shirt along with some other person is seen going from in front of the building's gate, but it is not clear that the person is Balbir Singh or some other person? The person going along could also not be identified and neither that person is in police uniform. During this time only another non-Sikh person wearing red and white color stripped t-shirt similar to that of the petitioner is seen coming inside the gate and goes inside the house. Due to which no specific person can be identified on the basis of clothes only.



Several persons might be wearing same color clothes. From which the allegation alleged by the petitioner are not proved.”

Counsel for the petitioner further contends that in the given circumstances, in CRM-M-41963-2021, Coordinate Bench further gave directions as follows : -

“In case it is found that the petitioner has falsely been implicated, necessary disciplinary action will be taken against the erring police officials and a fresh report under Section 173(8) Cr.P.C. will be presented before the trial Court.”

Counsel for the petitioner further submits that now in order to save the police officers concerned from departmental action and criminal prosecution, SIT has filed the aforesaid report under Section 173 (8) of Cr.P.C. which is merely an eye wash to over-reach the previous order passed by Coordinate Bench of this Court as has been stated above.

Notice of motion.

Mr. C.L.Pawar, Addl. AG, Punjab accepts notice on behalf of respondents No.1 to 5 and prays for time to seek necessary instructions and to file specific reply.

List on 19.7.2023.

In the meantime, the trial Court is directed to adjourn the trial beyond the date fixed in the present petition.”

7. The CCTV footage is available from the date of the alleged offence. The genuineness of the same has also been verified by the FSL vide its report dated 07.02.2022 (Annexure P-13). It is the contention of the learned counsel of the petitioner that a perusal of the footage would falsify the story of the prosecution. However, the SIT has not considered the same while filling a supplementary final report under Section 173(8) Cr.P.C. Since the footage shows personnel of the Punjab Police fiddle about with the scooter from which the contraband was allegedly recovered, it becomes all the more necessary to ensure that the investigation is credible. It is settled law that where a constitutional Court is satisfied that accusation is against a person who by virtue of his office could influence the ongoing investigation and cause prejudice to the complainant or the victim, it can invoke its power to transfer the



investigation to a different agency, especially when it becomes necessary to instill confidence in the investigation or where such order may be necessary for doing complete justice and enforcing the fundamental rights. A reference in this regard can be made to *Rashmi Behl vs. State of Uttar Pradesh and others 2015(2) RCR(Criminal) 45*, *State of Punjab vs. Davinder Pal Singh Bhullar and others 2012(1) RCR(Criminal) 126*, *State of Punjab vs. Central Bureau of Investigation and others 2011(9) SCC 182*, *R.S. Sodh vs.. State of U.P.(supra)* and *Kashmeri Devi and Delhi Administration, 1988(2) RCR(Criminal) 44*.

8. However, diligently and fairly might the officers of Punjab Police carry out the investigation, the same is bound to lack credibility since the allegations are levelled against an official of the same police force. In view of the legal maxim-*Justice should not only be done, but should manifestly and undoubtedly be seen to be done*, this Court is of the opinion that endeavours must be made to ensure that the investigation is and appears to be fair.

9. As the allegations are against the officials of Punjab Police, therefore, in the interest of justice, the DGP, U.T. Chandigarh is directed to depute an IPS Officer of AGMUT cadre, posted in Chandigarh for further investigation into the matter, within one week from receipt of a certified copy of this order.

10. Mr. Manish Bansal, P.P., U.T. Chandigarh is present in Court and accepts notice on behalf of U.T. Chandigarh, on the asking of this Court.

11. The IPS Officer so deputed is directed to dispassionately investigate the veracity of the allegations made by the petitioner and also take into consideration the material available on the record and the evidence collected previously. He/she is further directed to present a report before this



Court within two months of the date of the order passed by the DGP entrusting the investigation to him/her. The concerned SSP, SAS Nagar (Mohali) is also directed to transfer the record of the case to DGP, U.T. Chandigarh, forthwith.

12. Accordingly, Registry is directed to hand over the complete paper book to Mr. Manish Bansal, P.P., U.T. Chandigarh. A copy of this order be forwarded to learned P.P., U.T. Chandigarh and learned State counsel for Punjab for strict compliance.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

28.01.2025
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No