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ASHISH KAPOOR AND ANR. VS MANMOHAN KUMAR AND ORS.

Present: Mr. Nikhil Ghai, Advocate
for the petitioners.

The petitioners, who are husband and wife, are praying for initiation of contempt proceedings for violating the order dated 17.02.2023 passed in CWP-3235-2023. It is also prayed that since the petitioners are repeatedly involved in successive FIRs registered for the same incident, the respondents be directed that till disposal of aforesaid writ petition, no further coercive action be taken against petitioner No.2, who is wife of petitioner No.1, in FIR No.21 dated 30.05.2023 and FIR No.208 dated 17.07.2023..

Learned counsel for the petitioners refers to some relevant dates of the case. It is submitted that initially, on 05.05.2018, FIR No.151 dated 05.05.2018 under Sections 406, 420, 120-B IPC, Section 24 of Immigration Act and Sections 467, 468, 471 IPC, Police Station Zirakpur, District SAS Nagar (Mohali) was registered against 'P' (name not disclosed), her mother, brother and sister-in-law, on the basis of a complaint given by one Lovlish Garg that he paid Rs.25.00 lacs to the aforesaid accused for immigration to U.S., but neither money was returned nor any visa was granted. The accused were arrested and were kept in Patiala Jail, where petitioner No.1 was Superintendent of Jail, Patiala and a complaint was given that some extortion racket was going on. Thereafter, an inquiry was conducted and statements of some inmates were recorded and FIR No.3 dated 01.05.2019



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under Sections 377, 388, 389, 109, 115, 116, 120 IPC was registered at Police Station SSOC, Mohali. Later on, petitioner No.1, who was Superintendent of Jail, Patiala was dismissed from service and challan was presented in FIR No.3, which is pending trial. On 06.08.2019, 'P' (complainant) and her family members were convicted by Judicial Magistrate 1st Class, Dera Bassi in FIR No.151 and their appeal is pending. Later on, an SIT was constituted and on 16.10.2019, Sections 7, 13(b)(i) of P.C. Act and Sections 376(2)(a), (b), (d), 354, 419, 506 IPC were added in FIR No.3 and petitioner No.1 was nominated as an accused.

Learned counsel further submits that later on, after conducting the investigation, allegations of rape and extortion levelled by 'P' (complainant) were not proved and the police filed cancellation report in FIR No.3, which is pending consideration before the Illaqa Magistrate. Again 'P' (complainant) moved a complaint before the State Police Complaints Authority, Punjab alleging same allegations of rape and extortion qua which cancellation report stands submitted before the Illaqa Magistrate. On 06.10.2022, DSP Varinder Singh Gill got FIR No.17 under Sections 7, 7(A) of PC Act read with Sections 420, 120-B IPC against petitioner No.1 with regard to same allegations, which are part of FIR No.3, which, after conducting the investigation, was cancelled by submitting the report before the Special Court. In this FIR, it is stated that some secret information is received that petitioner No.1 has extorted money from the complainant 'P', when she was in custody. Later on, an inquiry was



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also opened against petitioner No.1 for investigation under Section 13 of PC Act regarding disproportionate assets, but no FIR was registered in this regard. It is further submitted that on 03.11.2022, vide its directions, State Police Complaints Authority, Punjab again recommended re-investigation of FIR No.3 and FIR No.151 by registering a new FIR or by re-investigating the same FIRs. It is also submitted that on 30.12.2022, a new FIR No.4 dated 30.12.2022 was registered under Sections 376(2)(a), 376(2)(b), 376(2)(d), 376(2)(c) IPC. The petitioners filed CWP-3235-2023, in which the writ Court, vide order dated 17.02.2023, stayed recommendation of the State Police Complaints Authority, Punjab, vide which a direction was issued to re-investigate FIR No.3 and subsequent thereto, aforesaid FIR No.4 was registered. The order dated 17.02.2023 reads as under: -

“Learned Senior counsel appearing on behalf of the petitioner inter alia contends that Police Complaint Authority while looking into the alleged complaint has gone beyond the scope of powers conferred upon it and has commented upon the investigation conducted and has also recommended reinvestigation in the matter. He submits that the Police Complaint Authority could not have gone into merits of the investigation and could have only enquired into the complaints relating to the serious misconduct as per the Rules for Conduct of Business of the Punjab State Police Complaint Authority, 2020 (Annexure P-5).



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Notice of motion for 12.05.2023.

Process dasti as well.

In the meanwhile, the operation of the impugned order dated 03.11.2022 to the extent of recommendations contained in para 32 (v) shall not be given effect till the next date of hearing.”

It is further submitted that when the respondents did not adhere to the order, COCP-1506-2023 was filed, in which, by passing a detailed order dated 18.05.2023, direction was issued to the respondents to strictly adhere to the order dated 17.02.2023 passed in CWP-3235-2023, after recording the aforesaid facts and in view of the fact that investigation in FIR No.4 was still going on, as statements under Sections 161 and 164 Cr.P.C. were being recorded. It is also submitted that in the meantime, CRM-M-2151-2023 filed by petitioner No.1, praying for grant of regular bail in FIR No.17, was allowed by the Coordinate Bench, by passing the following order: -

“This order shall dispose of aforesaid 2 petitions filed on behalf of Ashish Kapoor and Harjinder Singh respectively, seeking grant of regular bail in respect of aforementioned FIR

2. The allegations, in nutshell, are that Ashish Kapoor had got acquainted with one [REDACTED] who was in custody in Amritsar jail. A case was registered against Prem Lata, Kuldeep Singh and Preeti, who are mother, brother and sister-in-law of said [REDACTED] respectively. Ashish Kapoor took the amount of Rs.1 crore from these persons. The said amount was given to him through different bank accounts through ASI Harjinder Singh.

3. Learned counsel for the petitioner/s have submitted that



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they have falsely been implicated in the present case and that it is a case where the occurrence allegedly taken place in the year 2018, whereas the instant FIR came to be lodged in the year 2022. It has further been submitted that as a matter of fact, a part of the allegations as leveled in the instant FIR, was part of the another FIR, which was lodged in the year 2019 i.e. FIR No.3 dated 01.05.2019 registered at Police Station S.S.O.C., SAS Nagar, under Sections 377, 388, 389, 109, 115, 116, 120-B IPC and which was thoroughly investigated by the police and upon conclusion of investigation, a cancellation report was submitted, which is still pending. Learned counsel have further submitted that in the instant case challan already stands presented and in these circumstances, further detention of the petitioners will not serve any useful purpose particularly when sanction qua Harjinder Singh is still awaited.

4. Opposing the petitions, learned State counsel assisted by counsel for the victim/complainant has submitted that there are specific allegations against the petitioners, which duly stand substantiated from the evidence collected during the course of investigation which clearly show that the cheques which were got signed from Prem Lata were got encashed through various private persons and who after getting the same encashed handed-over the amount of Harjinder Singh, who further passed on to Ashish Kapoor. Learned State counsel has, however, informed that the petitioners as on date have been behind bars since the last about 7 ½ months. It has also been informed that although challan stands presented, but charges are yet to be framed as sanction qua one of the accused is still awaited. It has further been informed that Ashish Kapoor stands involved in 1 more case registered under



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Section 376 IPC.

5. *Learned counsel appearing on behalf of Ashish Kapoor has, however, clarified that the said FIR u/s 376 IPC was lodged pursuant to directions issued by the Punjab State Police Authority and in respect of which proceedings have been stayed by this Court.*

6. *Learned counsel representing the victim/complainant has submitted that in the present case, report of FSL pertaining to matching of voice has been received, which clearly indicts the accused. It has further been submitted that even video recording also shows accused Ashish Kapoor hitting the victim.*

7. *This Court has considered rival submissions.*

8. *It is no doubt correct that specific allegations have been leveled against the accused and the police claims to have collected sufficient evidence to establish the said allegations. However, this Court cannot lose sight of the fact that the petitioners have been behind bars for a substantial period of about 7 ½ months. The trial has not even commenced till date inasmuch as charges have not been framed for want of sanction in respect of one of the accused. In these circumstances, the petitioners cannot be kept behind bars for an indefinite period. Both the petitions, as such, are accepted and the petitioners are ordered to be released on regular bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.*

9. *A photocopy of this order be placed on the connected file.”*

Learned counsel submits that on the same date i.e. 30.05.2023, when the Coordinate Bench of this Court granted regular bail to petitioner No.1 in FIR No.17, another FIR No.21 was registered to ensure that petitioner

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No.1 does not come out of the jail. It is further submitted that FIR No.21 is registered on the basis of an inquiry, which was started in 2022 regarding disproportionate assets and petitioner No.1 was never arrested from 2022 till the date of registration of FIR and when he was granted bail on 30.05.2023, his arrest was shown in FIR No.21 on the same date.

With regard to petitioner No.2, learned counsel submits that though she is not a public servant, however, to override the orders of the writ Court, the police authorities, in order to arrest petitioner No.2, being wife of petitioner No.1, have also implicated her as an accused. It is further submitted that another FIR No.208 dated 17.07.2023 is registered under Sections 327, 323, 294, 506, 120-B IPC, at Police Station Zirakpur, District SAS Nagar (Mohali) against both the petitioners in violation of the orders of this Court, with the allegations that they have tortured the complainant 'P', when she was in custody in 2018. This FIR is registered on the basis of video clipping that petitioner No.1 has slapped her. It is further submitted that said video was already taken into consideration by the State Police Complaints Authority, Punjab, when it recommended re-investigation, which has already been stayed in CWP-3235-2023 and after a period of 05 years, FIR No.208 has been registered against both the petitioners, whereas petitioner No.2 has no role in the same. It is also submitted that by change of the Investigating Officer, order of the writ Court is sought to be violated by one way or the other.

Learned counsel has referred to the challan submitted in FIR No.3,



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wherein findings regarding allegations against petitioner No.1 torturing complainant 'P' in custody, were duly considered. It is thus submitted that the respondents are in continuous violation of the directions of the writ Court.

Notice of motion.

On asking of the Court, Mr. Aman Pal, Addl. AG, Punjab accepts notice on behalf of the respondents and on instructions from both the Investigating Officers, submits that at this stage, presence of petitioner No.2 is not required and seeks some time to file the compliance affidavit.

List again on 03.11.2023.

To be listed along with COCP-1506-2023.

In the meantime, the respondents will ensure that no coercive action is taken against petitioner No.2 in FIR No.21 and FIR No.208, failing which the respondents will remain present before this Court on the said date.

21.07.2023
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[ARVIND SINGH SANGWAN]
JUDGE