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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 09.10.2023

Kulwinder Singh

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Dinesh Mahajan, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

Mr. Harpal Singh, Superintendent of Police,
(joined through Video Conference).

ASI, Sartaj Singh, Investigating Officer, in person.

Inspector Manjeet Kaur, SHO, Police Station Sadar Pathankot.

ARUN MONGA, J. (Oral)

Petitioner, allegedly an absconding accused, suffers from Post-Polio Residual Paralysis of lower limbs and is unable to even stand on his own, let alone walk or run, being wheel chair bound owing to his 80% permanent disability, is before this court aggrieved by the shoddy investigation and the high handedness of the power driven Khaki officials in State of Punjab, which is writ large from the bare factual narrative of the case herein.

2. Per prosecution version, the petitioner, named as one of the accused, fled away from the scene of occurrence when the police officials tried to apprehend him on a surprise check of the vehicle, wherein he was traveling, wherefrom huge catch of liquor was recovered in violation of Punjab Excise Act, 1914. Subsequently an FIR no.98 dated 12.09.2023 was registered under sections 61, 78(2) of Punjab Excise Act and sections 420, 467, 468, 471 read with 120B of the IPC against various accused on the complaint of ASI Sartaj Singh.

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2.1. As per FIR narrative, On September 12, 2023, ASI Sartaj Singh was on duty with other police officials in their private vehicle no. PB-35-Z-0645, when he received a secret information about one Inderjit Rai Bhandari and his son Swatanter Rai Bhandari's involvement in illicit liquor trade. Information disclosed their movement from village Chouhan via Gaisalnear Dharmai Bridge. A barricade was set up and police officials tried to stop their car. Though they managed to escaped and, so did the petitioner herein, but two others were caught along with their two vehicles and identified as Charanjit Singh and Sourav Kumar. On their questioning, they revealed the names of the fleeing persons as Kulwinder Singh (petitioner herein), Inderjit Rai Bhandari and his son Swatanter Rai Bhandari. A significant quantity of various liquors, details of which are more particularly recorded in the FIR (Annexure P/1), was seized from their two vehicles/cars. FIR was thus registered naming the petitioner as one of the absconding accused.

3. In the aforesaid factual background, the matter was heard earlier also by me and an order was passed on 05.10.2023, which being self-explanatory, is reproduced herein below:

“Petitioner's counsel inter alia argues that the petitioner is severely incapacitated his waist down, with an 80% locomotor disability caused by polio, rendering him entirely wheelchair bound and in need of constant assistance for his mobility. He is incapable of driving any vehicle. Notwithstanding, ASI Sartaj Singh, the informer/complainant in FIR, alleged that the petitioner was driving an Ertiga car at the relevant time. When ASI Sartaj Singh, along with other police officials, attempted to apprehend him, he fled the scene. On a wheelchair or crawling, one doesn't know? An FIR was lodged, specifically naming him as an accused who absconded from the scene qua alleged recovery of liquor from the car's trunk, that was abandoned on the spot of interception.

Be that as it may, I have perused the petition and, if the averments contained therein are to be believed, the registration of the FIR against the petitioner seems to be blatant misuse of police power.

Notice of motion.

On advance service of copy of petition, learned State counsel and accepts notice on behalf of respondent-State of Punjab. On instructions from ASI Sartaj Singh, he submits that the petitioner's

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name has inadvertently been mentioned in the FIR and in fact, it is his brother who is the real accused.

At this stage, on oral request of learned counsel for the petitioner, Inspector Manjit Kaur, SHO of Police Station Sadar, Pathankot and ASI Sartaj Singh are arrayed as respondents no.2 and 3, respectively. Registry to make necessary corrections in the memo of parties.

*The newly added respondents no.2 and 3 shall remain personally present in Court on the next date of hearing as there is much to be explained on their part. Given the nature of allegations, SSP, Pathankot, to also join proceedings through video conferencing
Meanwhile, no coercive steps shall be taken either against the petitioner or his family or his brother qua the FIR in question.*

Adjourned to 09.10.2023.”

4. *Apropos, on resumed hearing today, at the very outset, learned State counsel submits that SHO Ms. Manjeet Kaur along with ASI Sartaj Singh are present in Court and offer their unconditional apology for the faux pas that has occurred in the case due to mistaken identity of the petitioner. He submits that false name of the petitioner was given in the disclosure statement of co-accused Charanjit Singh, who was arrested on spot. Same led to the petitioner being named as one of the prime accused no.5 in the FIR in question. To say the least, their belated apology, at this stage seems to have been tendered to save themselves from the adverse consequences contemplated at the time of passing the order dated 05.10.2023, when the IO was very much present in this Court and said order was dictated in his presence.*

5. *That aside, it is rather unfathomable that when anticipatory bail petition dated 21.09.2023 was filed before the learned Sessions Court at Pathankot and the same came up for hearing and, notice of seven days was issued and the contents thereof were completely known to the police officials as well as to the APP, even then no attempt was made to verify with regard to the identity of the petitioner and/or he being 80% incapacitated and wheel chair bound.*

6. *On the contrary, a completely opposite stand was taken before the learned Sessions Court at the time of arguments, which is recorded in the order*

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dated 28.09.2023 vide which the anticipatory bail was dismissed. Being *apposite*, same is reproduced herein below:

“4. Counsel for the applicant/accused argued that the present applicant/accused had nothing to do with the alleged recovery if any was made in the said FIR. According to the prosecution story the name of the present accused cropped up on some secret information. The police had concocted a complete false story to implicate the applicant/accused and his son in the present FIR. As per the story of the prosecution the applicant/accused Kulwinder Singh was driving the Car make Ertiga bearing no.HP68-A-0506 whereas the applicant/accused is having physical disability and the said disability is locomotor in nature and that too to the extent of 80%. The applicant/accused is totally dependent upon other for his movement. The said disability was assessed by the Board of Doctors of Civil Hospital, Pathankot and a certificate to that extent was issued by the issuing authority. It is highly improbable story to believe that the accused was seen driving Ertiga Car. The police of PS Sadar, Pathankot had concocted a false story. How come it was possible that the applicant/accused who was not even present within the jurisdiction of Punjab committed any such offence and ran away from the spot when there was a number of police officials raiding on receiving of secret information. According to the prosecution, the recovery has already been effected and as such the applicant/accused is no more required by the police for any investigation. The local police is doing discrimination and was registered a false case against the applicant/accused. The applicant/accused is having no role whatsoever with the present alleged recovery. Moreover, it was someone who got the present applicant/accused falsely implicated in this case. The applicant/accused is a person having so much respect in the locality and does not involve in such kind of illegal activities. The applicant/accused is having a lot of respect in his locality as he runs a shuttering and cement store in village Jungle. The police officials of PS Sadar raided the house of the applicant/accused, when the applicant/accused was out of station and the family members of the applicant/accused told him about the registration of the false case against the applicant/accused in the PS Sadar and there is an apprehension of arrest to the applicant/accused and further involvement in other criminal cases. He further argued that the applicant/accused is ready join the investigation. The applicant/accused undertakes to abide by all the terms and conditions of the bail. He prayed to allow the bail application.

5. On the other hand, learned Addl. PP for State opposed the contention raised by the applicant/accused. She further argued that heavy quantity of illicit liquor has been recovered from the non-applicants/accused in the present case. The applicant/accused with the convenience of non-applicants/accused committed the present crime. The some of the recovery has already been effected from the non-applicant/accused Charanjit Singh@Happy who nominated the name of the applicant/accused. The fake Holograms were also recovered from the said vehicles. The applicant/accused and the non-applicant/accused Sawtanter Rai Bhandari have to sell those

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liquor bottles by affixing their fake Hologram thereby the applicant/accused had participated actively in the crime. So, he is not entitled to the bail. Hence, he prayed for dismissal of the bail application.

6. *After hearing rival arguments addressed by the counsel for the applicant/accused and learned Addl. P.P for State and further going through the record available on file, this court is of the view that the present FIR has been registered on the basis of secret information. The name of the applicant/accused along with non-applicants/accused has been mentioned in the present FIR with the allegations that the applicant/ accused along with non-applicants/accused were coming on vehicles bearing No.HP68-A-0506, PB06-Y-8668 and PB35-AE-6267 containing huge quantity of country made liquor of Punjab mark Royal Stag Superior Whisky, Mc. Dowell No.1 Deluxe, Punjab Club Gold Whisky and Black Horn XXX Rum. Fake Hologram of marka Trace and Trace were also recovered from the said vehicles. Moreover, as per the version of the prosecution the non-applicant/accused Inderjit Rai Bhandri has already been involved in other FIRS. As the applicant/accused has committed the heinous crime which will going to effect the economy of the State. So, he is not entitled to the discretionary relief of anticipatory bail. Hence, the present bail application deserves no merit and the same stands dismissed accordingly.”*

7. Pertinently, the aforesaid order was passed on 28.09.2023 and during the court hearing today, it transpires that on the same very day at 03:20 pm an DDR was recorded by the ASI Sartaj Singh stating that petitioner was inadvertently named as the prime accused and, he is actually innocent. In course of the hearing, he was put a question as to why the said DDR was not handed over to learned Sessions Court, when the matter was being heard in Court on the same very day and, if the same was not possible, why the Court was not verbally informed that petitioner had already been found innocent so as to render the anticipatory bail petition infructuous on that ground alone, instead of being dismissed on merits, the ASI states that he had though informed the Court but notice of the same was not taken thereof by learned Sessions Judge sized of the matter. Once again, I do not find such an explanation worthy of acceptance.

8. Be that as it may, SSP, Pathankot is directed to personally look into the matter and assign the investigation to another police official not below the rank of DSP. It is also directed that the SSP, Pathankot shall conduct an administrative

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enquiry into the entire matter and, in case he finds the aforesaid statements of SHO/ASI made before this Court to be false, then action be taken against the delinquent official/s for deliberately making a false statement including institution of appropriate proceedings. Report thereof be submitted before the learned Additional Sessions Judge who passed the order dated 28.09.2023, dismissing the anticipatory bail petition of the petitioner. After considering the report, learned Additional Sessions Judge shall, if deemed appropriate, take further steps to register a complaint under Section 195 of the Indian Penal Code, 1860 against the delinquent police officials who have led to the whole *melee*, as narrated hereinabove.

9. As regards the proceedings before this Court, learned counsel for the petitioner submits that after the present anticipatory bail petition was filed and the same came up for hearing on 03.10.2023, the same evening the petitioner was informed by a communication dated 03.10.2023 that he has been declared innocent vide DDR recorded on 28.09.2023. It does appear that even the DDR has been ante-dated, it is rather not comprehensible that if the same had been prepared on 28.09.2023, what stopped the police officials to convey the same to the petitioner despite lapse of as many as almost five days. It is only when notice was issued by this Court and the aforesaid order dated 05.10.2023 was passed by this Court that the petitioner was conveyed of the DDR recorded on 28.09.2023, declaring him innocent. Be that as it may, this shall also be inquired into by the SSP.

10. As far as present petition is concerned, the same is rendered infructuous.

11. Before parting, however, it is considered desirable that the petitioner, who has suffered unnecessarily at the hands of erring police officials and was forced into litigation first before learned Sessions Court and then before this Court, be awarded at least the litigation costs. Same are assessed at Rs.50,000/- for litigation

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before learned Court below and Rs.1,00,000/- for this Court, thus a total Rs.1,50,000/-. The same be paid from the State exchequer as of now, to be recovered subsequently from the erring police officials, subject to outcome of the enquiry to be conducted by the Senior Superintendent of Police, Pathankot.

11. Disposed of, accordingly.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

October 09, 2023

Ajay

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