

2024.PHHC:160975

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.238

CRM-M-40569-2024 (O&M)
Date of decision : 03.12.2024

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Jagjit Singh, Advocate, for the petitioner.

Mr. Deepender Singh, Addl. AG, Punjab.

Mr. Arshdeep Singh Cheema, Advocate, as *Amicus Curiae*.

KIRTI SINGH, J. (Oral)

1. The jurisdiction of this Court was invoked under Section 483 of BNSS, 2023 for grant of regular bail to the petitioner in case FIR No.125 dated 26.06.2024, under Section 22 of the NDPS Act, 1985 registered at Police Station Sultanpur Lodhi, District Kapurthala.

2. The translated contents of the FIR are reproduced below:-

"SHO Sultanpur Lodhi, Jai Hind, Today, alongwith ASI Harbhajan Singh No.1386/KPT, ASI Baldev /KPT alongwith investigation Kit checking Police doubtful Station people to Mothawali, Latiyawal going towards, when for from Dadwindi, etc. were the police party reach cremation ground of Mothawala then from the side of cremation ground from Kacha passage a car moving towards road in a fast speed after seeing the police party in the government vehicle in uniform and at once tried to turn around the car with the result the rear tyres of the car fell in the paddy fields and the car was stopped and the in our presence the person took a plastic polythene from his right pocket of his lower and thrown in his feet. In which the capsules were clearly seen. He was apprehended with the help of other employees and asked his name and address, who informed the alias his name Lovely loverpreet Singh son of Sharanjit Singh resident of Mothawala, Patti Kamalpur, Police Station Sultanpur Lodhi, District the Kapurthala and car S-



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presso No.PB-41-D-8567 white coloured was found. On this I SI in the presence of employees asked him about the polythene thrown by him then [REDACTED] alias Lovely above stated that in the polythene there are narcotic capsules. After seeing the police party he frightened to save himself reversed the vehicle and the polythene was thrown in his feet. He failed to show any license/permit or prescription of doctor of thrown narcotic capsules. On this as per following the procedure Under Section 42 of NDPS Act the report through AB Pinder Singh No.975/KPT in sent, I SI alongwith companions informed the names and reason for checking. I SI stated that aa per your saying you are having narcotic capsules the search of you and the polythene thrown by you and of your car to be conducted, but you have legal right to get the search to be conducted from Magistrate sahab or from any Gazetted Officer of you and your thrown polythene and of your car. Then arrangement can be made. Then he stated that he has full faith in you. You can search me and the polythene thrown by me. On this, a notice U/s 50 of NDPS Act was given to him and the [REDACTED] alias [REDACTED] above signed the same and a separate consent memo was prepared and the same was signed by Loverpreet Singh alias Lovely and witness the same before search an effort was made 10 join public witnesses/respectable person/Sarpanch/Panch/Lumberdar/Chowkidar but everybody shown his inability, due to nobody have joined this the reason police party. Then apprehended [REDACTED] alias [REDACTED] above picked up the polythene thrown by him and opened its mouth for checking and it was found narcotic capsules without any mark were recovered. Recovered narcotic capsules after counting it come to 525. The same were put in the same polythene and prepared parcel and stamped with my stamp RS and sample of stamp was prepared separately and handed over to ASI Harbhajan Singh No.1386/KPT after checking the car a RC was recovered from the dash board No. PB-41-D-8567 coloured RC is in the white name of [REDACTED] son of Sharanjeet Singh resident of Kamalpur, Kapurthala. Which 08.02.23 recovered narcotic to valid from 07.02.38. parcel of The 525 with car one capsules stamped stamp RS alongwith S-presso No. PB-41-D-8567 along with RC were taken into possession vide separate recovery memos and taken into possession by the police for evidence. That the [REDACTED] alias Lovely son of Sharanjit Singh resident of Mothawala, Patti Kamalpur, Police Station Sultanpur Lodhi, District Kapurthala by keeping in his possession of 525 narcotic capsules license/permit/doctor without slip any and committed offence Under Section 22-61-85 of NDPS Act. On this massage is sent for registration of case by hand constable Mandeep Singh No.630/KPT to the police Station for registration of case and number be informed control room be informed through wireless, special report be prepared and submitted to the Illaga



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Magistrate Sahab and Senior Officers. I SI alongwith employees is present ent at the spot for investigation. Today, in the area of cremation ground Mothawal, Sultanpur Lodhi at 12:50 PM Sd/ Rajinder Singh, SI P.S. Sultanpur Lodhi dated 26.06.2024."

Submissions made by learned counsel for the petitioner

3. Learned counsel for the petitioner submits that the petitioner is a Diploma Holder in Agriculture (Plant Protection & Pesticide Management) and completed his Diploma Course from Lovely Professional University, Jalandhar. On 24.06.2024 at around 5:30 to 6:00 PM, the petitioner after inspecting a field of paddy was returning from the fields in his Car bearing No.PB-41-D-8567. The road was narrow and police vehicle was behind the petitioner's car. Once the road widened, the petitioner pulled over to let the police vehicle pass but the police officials became annoyed as the petitioner did not initially give them passage and subsequently implicated him in this case. The incident actually occurred on 24.06.2024 but the FIR was registered on 26.06.2024 at 12:30 P.M. and the petitioner was kept in illegal confinement during this period and his family members were not informed about this.

3.1 It has been argued by the learned counsel for the petitioner that the petitioner has been falsely implicated in this case and he is not involved in any other criminal case. It was further submitted that on 24.06.2024, the parents of the petitioner were constantly trying to contact the petitioner on his phone, however, as he was in illegal confinement/custody and the mobile phone was in possession of the police officials, the same was not answered. On 26.06.2024, the police officials lodged the above-stated FIR and the petitioner was officially taken into custody. It was contended that the story



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put up by the police was false and concocted and the same stood corroborated from the incoming calls which were never answered and location of the mobile phone.

Submissions of the learned State counsel

4. *Per contra*, learned State counsel has opposed the present petition and while referring to status report dated 27.11.2024 submits that the as per the verification conducted by the Director General of Police, Punjab no illegality or violation of any provisions of NDPS Act was found in the investigation conducted. However, there is a delay of about 17 days in presentation of cancellation report and regarding a departmental inquiry has already been initiated by the Senior Superintendent of Police, Kapurthala.

Submissions of learned *Amicus Curiae*

5. Learned counsel Mr. Arshdeep Singh Cheema, Advocate appearing as *Amicus Curiae* in this case while referring to the status report dated 27.11.2024 submits that the conduct of the concerned investigating officer is questionable as in two more similar cases, in which the FIRs were registered, salt Acetaminophen (Paracetamol) was found in the alleged recoveries.

5.1 He has argued that it could not be ignored that the petitioner is well educated and only 36 years old and he would be burdened with the sword of registration of the present FIR under the serious offences of NDPS Act for the rest of his life. His employment prospects and other avenues would be effected by his involvement in the instant FIR, even though, he had been discharged by a Court of competent jurisdiction.



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5.2 It has further been contended in this regard that the law has evolved over the years and the principle of right to be forgotten is now being accepted as a part of the right to privacy by various precedents.

5.3 In this regard, reference has been made to judgment rendered by the Hon'ble Himachal Pradesh High Court in **State of Himachal Pradesh Vs. XXX, 2024 SCC online HP 3169**, wherein it has been held under:

"....17. This Court in plethora of cases has come across the issues where FIRs are registered with any rhyme or reason or out of knee jerk reactions and the proceedings are ultimately quashed by the Court in exercise of jurisdiction under Section 482 Cr. P.C. We, therefore, are of the considered view that after the accused gets blame-free by a process of law, the respondent cannot be seen to be carrying sword of his being accused for all his life. Right to oblivion; right to be forgotten are the principles evolved by the democratic nations, as one of the facets of right to information privacy. The rights have been evolved in the countries like France and Italy way back in the 19th century.

20. Thus, there can be no dispute that right of privacy of which the right to be forgotten and the right to be left alone are inherent aspects. Once that be so, obviously, the names of the prosecutrix as also the appellant need to be masked/erased so that they do not appear/visible in any search engine, least the same is likely to jeopardize and cause irreparable hardship, prejudice etc., not only to the respondent and the prosecutrix, but to their little daughter in their day-today life, career prospects etc. etc.

21. Article 21 of the Constitution of India mandates that no person shall be deprived of his life or liberty except in accordance with law. It is more than settled that the expression 'life' cannot be seem to connote a mere animal existence it has a much wider meaning. It takes within its sweep right to live with dignity. In the crime, once the accused gets acquitted/honorably discharged by a competent Court of law or this Court, and the order becomes final, the shadow of crime, if permitted to continue and substitute its place for the shadow of dignity on any citizen, it would be a travesty of the concept of life under Article 21. Every person has a right to live with dignity.

22. In view of the aforesaid discussion, we not only do not find any merit in the instant application and accordingly reject the application for grant of leave to appeal, but also direct masking the names of the appellant and the prosecutrix



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from the data base of the learned Special Judge, Bilaspur and further direct the Registrar General of this Court to mask the names of the appellant in the digital records, pertaining to the instant appeal.”

5.4. Reliance has further been placed upon judgment dated 22.07.2024 passed by the Delhi High Court in **Rakesh Jagdish Kalra Vs. India Today Group and others 2024 SCC Online Delhi 5113**, it has been held as under:-

“26. Therefore, the question which confronts this Court at this stage is whether any direction to the defendants is warranted to remove the posts/articles containing libelous and defamatory contents against the plaintiff in respect of a criminal case in which the plaintiff has secured honourable acquittal which has attained finality.

27. The answer is not far to seek. In Registrar General, High Court of Karnataka (supra), the High Court of Karnataka dealing with somewhat similar situation has observed that after the accused gets blame-free by a process of law, he cannot be seen to be carrying the sword of him being accused on his head for all his life. The Court further noted that right to oblivion; right to be forgotten are the principles evolved by the democratic nations, as one being a facet of right to informational privacy.

33. Incidentally, the Hon’ble Supreme Court in K.S. Puttaswamy (Retd.) (supra) observed that the right of an individual to exercise control over his personal data encompass his right to control his existence on the internet, but the same is not an absolute right. The existence of such a right does not imply that a criminal can obliterate his past. The right to privacy has to be balanced against other fundamental rights like the freedom of expression, or freedom of media etc. The relevant part of the said decision reads as under:-

‘629. The right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet. Needless to say that this would not be an absolute right. The existence of such a right does not imply that a criminal can obliterate his past, but that there are variant degrees of mistakes, to the extent for all and sundry to know.

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635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right to total eraser of history, this right, as a part of the larger right to privacy, has to be balanced against



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other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.

Thus, Courts will have to balance the competing rights in the facts and circumstances of each case. This Court is prima facie of the view right to freedom of expression of the press in the present case must give way to the right to privacy of the plaintiff especially when he has been exonerated for all the allegations leading to his honourable acquittal. Apart from the existence of old news articles/posts on the internet, the plaintiff's reputation has been injured on account of updation of such posts which has again brought plaintiff's accusation under public glare. Further, the posts made by unknown persons on the defendant No.5's/X platform have also equally injured the reputation of the plaintiff. Therefore, it appears to be a fit case to invoke the right also lies in favour of the plaintiff. I am also satisfied that grave and irreparable damages will be caused to the plaintiff, if ad interim appropriate to grant ad interim injunction in favour of the plaintiff and against the defendant Nos.1 to 4 as well as unknown persons (John Deo) who have made per se defamatory statements against the plaintiff on 'X'.

6. Heard the rival submissions made by learned counsel for the parties and learned *Amicus Curiae*.

7. On 13.09.2024, the learned State counsel placed on record a copy of the FSL Report dated 21.08.2024, which was received by the office of the Senior Superintendent of Police on 31.08.2024, wherein it was stated that the samples received contained salt Acetaminophen (Paracetamol).

Relevant extract of report reads as under:-

"The capsules contained in the envelope under reference have been analyzed separately by chemical, YLC and instrumental analysis. On the basis of analysis, Acetaminophen (Paracetamol) has been found present in the capsules contained in the envelope."

7.1. After considering the FSL report dated 21.08.2024 in which it had been observed that the recovered capsules contained salt Acetaminophen (Paracetamol), the petitioner was released on regular bail by this Court vide



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order dated 13.09.2024 after undergoing an actual custody of 02 months and 15 days. Further vide same order, the Director General of Police, Punjab was directed to look into the matter and file a status report in the form of an affidavit detailing the proposed action to be taken against the concerned delinquent police officials who registered the FIR against the petitioner and the Senior Superintendent of Police, Kapurthala was also directed to be present in this Court on the next date of hearing.

7.2 In compliance thereto, the Senior Superintendent of Police, Kapurthala appeared and stated that a cancellation report has been presented on 17.09.2024 before the competent Court which has been accepted. Further, affidavit of the Director General of Police, Punjab dated 19.09.2024 was filed wherein it was stated that a committee comprising of the following officers was constituted to conduct in-depth investigation/enquiry regarding the matter:-

- | | |
|---|------------|
| (i) SP/PBI, Kapurthala | - Chairman |
| (ii) DSP/Narcotics, Kapurthala | - Member |
| (iii) DSP/Sub-Division, Sultanpur Lodhi | - Member |

7.3 Further, vide office order dated 18.09.2024 (Endst. No. 13966-67/CR-LA-1) Dr. S. Boopathi, IPS, Deputy Inspector General of Police, Punjab was directed to verify the investigation conducted in aforementioned FIR including the facts and circumstances leading to registration of the aforesaid case and to submit a comprehensive report at the earliest.

7.4 On 27.11.2024, a status report by the Director General of Police, Punjab was filed in this Court. As per said status report, Dr. S. Boopathi DIG, Punjab conducted a verification of the investigation



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conducted in the abovesaid FIR and vide No.286/R/DIG/Admn. Pb. dated 27.11.2024 had submitted status report in which it had been concluded as under:-

“That from all the circumstances, technical evidence, documentary evidence, statement of police party, statement of independent individuals, calls details etc. it has transpired that investigation officer SI-Rajinder Singh registered the FIR as per the recovery and circumstances and in compliance with the provisions of NDPS Act, the said FIR was registered and further any malafide intention of any of the police personnel in the registration of FIR could not be established. There is a delay in the submission of the cancellation report and a departmental inquiry has already been initiated by the SSP, Kapurthala vide order No.1902-06/Pending miscellaneous application(s), if any, also stands disposed of. Dated 18.09.2024 against SI-Rajinder Singh. In fact, after receiving the FSL report and report of the panel of the doctors, which stated that paracetamol does not come under the purview of NDPS Act, the cancellation report was submitted before the learned Court and the same was accepted by the learned Court in due course of law. The present report is submitted for perusal and further action.”

Conclusion

8. This is a case before this Court where due to high-handedness of the police authorities, the petitioner was subjected to prolonged incarceration for a period of about 13 days despite the fact that the recovery made from him was tablets containing salt Acetaminophen (Paracetamol) and the concerned police authorities despite having received the FSL report on 31.08.2024 failed to act promptly and get the petitioner immediately released/discharged in accordance with law. The petitioner was released on bail on 13.09.2024 after the intervention of this Court and the cancellation report was presented on 17.09.2024 i.e. after a period of about 17 days and the petitioner was ultimately discharged.

9. The unjust deprivation of liberty stem from the delay in filing the cancellation report(s). On a pointed query, learned State counsel has



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failed to explain the delay in presentation of cancellation report. The failure of the authority to act in a timely manner has not only violated the petitioner's fundamental right but also highlighted the misuse of power, causing undue mental and emotional distress. The prolonged incarceration under-scores the need for accountability and prompt action within the justice system to prevent such abuses of authority.

10. In **Smt. Nilabati Behera @ Lalita Behera Vs. State of Orissa and others 1994(1) RCR Criminal) 18**, it has been held that the State is liable to pay compensation for the wrong done by its officials in case, the fundamental right of a person under Article 21 of the Constitution has been violated. In such case, even the defence of 'Sovereign Immunity' is not available. In the case of **Dr. Rini Johar & Anr. v. State of M.P. & Ors., 2016(3) RCR (Criminal) 300: Writ Petition (Criminal) No.30 of 2015, decided on 03.06.2016**, the Hon'ble Supreme Court has held that the constitutional courts, taking note of suffering and humiliation, are entitled to grant compensation, which has been regarded as a redeeming feature. The Supreme Court has referred to the public law remedy which has been postulated in the case of **Nilawati Behera v. State of Orissa (supra)**, **Sube Singh v. State of Haryana, 2006(1) RCR (Criminal) 802 : (2006) 3 SCC 178** and **Hardeep Singh v. State of M.P., 2012(1) RCR (Criminal) 165: (2012) 1 SCC 748**. In the case of **Dr. Rini Johar (supra)**, the Hon'ble Supreme Court had awarded Rs.5 lacs as compensation, which was to paid by the State, with liberty to it to proceed against the erring officials, if so advised.



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11. This Court is deeply troubled by the high-handedness of the police authorities which have flagrantly disregarded the fundamental rights of a citizen as envisaged in the Constitution of India. It is appalling to witness such blatant violation where those entrusted with duty to uphold the rule of law failed to perform their duties. The Court finds the conduct unacceptable and deeply concerning, reflecting a systematic failure that under-mines the public trust. In the facts & circumstances of this case, the conduct of the erring official involved cannot be overlooked by this Court as accountability measures are necessary to ensure justice and uphold the rule of law.

Order

12. Having regard to the facts enumerated as above, this Court hereby passes the following order:

(i) The State of Punjab shall pay a compensation to the tune of Rs.2,00,000/- which shall be paid to the petitioner within a period of one month and 50% of this compensation amount shall be recovered from the salary of the erring official **Sub Inspector-Rajinder Singh;** and

(ii) The Registrar General of this Court is directed to mask the name of the petitioner in its digital records pertaining to CRM-M-40569-2024.



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- 13. The petition stands disposed of in the abovesaid terms.
- 14. Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

03.12.2024
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes