

116 CWP-PIL-29-2021

COURT ON ITS OWN MOTION VS STATE OF PUNJAB AND OTHERS

Present:- Mr. Rupinder S. Khosla, Sr. Advocate with
Mr. Sarvesh Malik, Advocate as Amicus Curiae.

Mr. S.P.S. Tinna, Addl. AG, Punjab.

Mr. Ankur Mittal, Addl. AG, Haryana.

Mr. Sumeet Goel, Advocate for CBI.

Mr. Pankaj Jain, Sr. Standing Counsel with
Mr. Jaivir Chandail, Advocate for UT, Chandigarh

Mr. Satya Pal Jain, Additional Solicitor General of India with
Mr. Dheeraj Jain, Senior Counsel for respondent No.3.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

Mr. Goel on behalf of CBI submits that the relevant information pertaining to Anti Corruption Bureau and Special Crime Branch, Chandigarh is available with CBI. However, certain data needs to be collected from Central units in Delhi. On the basis of same, an affidavit shall be filed. He prays for 10 days time for this purpose. Prayer is accepted. He shall also apprise the Court of investigation, if any, pending with CBI. If so, reasons for delay in completion thereof.

Pursuant to the last order passed by this Court, Mr. Satya Pal Jain has filed status report by way of affidavit of Mr. Karun Kumar Kataria. According to him, in two cases against two Ex-MLAs i.e. Avinash Chander and Sarwan Singh Phillaur, charges were framed on 9.10.2018. Out of 68, 63 Pws have been examined. However, proceedings have been stayed by Hon'ble Supreme Court vide its order dated 28.1.2019 passed in WP (Criminal) 175 of 2018 and next date of hearing in the same is 30.7.2021. He further submits that in two separate cases registered against Shri

Bhupinder Singh Hooda, Ex-CM, State of Haryana, charge sheet was filed before Special Judge, CBI-cum-Special Court, PMLA at Panchkula by ED in land cases i.e. COMA-/03/2021 and COMA/42/2019. In both the cases, cognizance has been taken. While in the first, next date of hearing is 1.6.2021 and in the latter, next date of hearing is 5.7.2021. He submits that Court shall be apprised of further progress in the matter.

Mr. Ankur Mittal along with Mr. Sanjay Kumar, I.G.P. (Administration) submits that he may be allowed to place on record additional affidavit. Prayer is accepted. Paras 4 to 6 thereof are reproduced hereunder : -

“4. That it is submitted that in the status report dated 23.05.2021 submitted by the deponent name(s) of the accused in three cases transferred to CBI were not mentioned. Therefore, detail of three cases transferred to CBI is being re-submitted with name of the accused as under : -

Sr. No.	Case FIR No. with name(s) of the accused	Particulars
1.	FIR No.439 dated 07.06.2011 U/S 302, 201, 323, 34 IPC removed and add 7/13 PC Act 1988 PC Civil Link KNL Against Zile Ram Sharma (the then MLA Assandh) and Om Parkash Jain (the then MLA Rural Panipat)	As per the orders of Hon'ble Punjab and Haryana High Court dated 26.09.2012 case was transferred to CBI, for investigation
2.	FIR No.09 dated 19.12.2015, u/s 201/204/409/420/467/468/471/120-B & 13 PC Act, PS SVB/PKL Against Ex-Chairman, HSVP, Sh. Bhupinder Singh Hooda, EX-Chief Minister, Haryana and sitting MLA from Garh-Sampla-Kiloi, the then Administrator, HSVP and others reg. Illegal allotment of industrial plots in Panchkula	Case transferred to CBI as per notification of Govt. of India, Ministry of Personnel, Public Grievance and Pension No.228/62/2015-AVDII dated 23.12.2015. The case has been handed over to CBI on 21.12.2015 vide RC No.36 dated 31.12.2015.

Sr. No.	Case FIR No. with name(s) of the accused	Particulars
3.	FIR No.03 dated 05.05.2016, u/s 409/420/120-B & 13 PC Act, PS SVB/PKL Against Ex-Chairman, HSVP, Sh. Bhupinder Singh Hooda, Ex-Chief Minister, Haryana and Sitting MLA from Garhi-Sampla-Kiloi, the then FC & Secy to Govt. Haryana Town & Country Planning Deptt.	Case transferred to CBI and hand over to CBI vide RC No.63 dated 10.04.2017

5. That it is submitted that in para 5 of the status report dated 23.05.2021, it was inadvertently mentioned that 21 under trial cases were registered in the State of Haryana against 08 Ex-MLAs of Haryana and 02 Ex-MLAs from Himachal Pradesh. It is submitted that 21 under trial cases are pending against 07 Ex-MLAs of Haryana, 02 Ex-MLAs of Himachal Pradesh and 01 Ex-MLA of Delhi.

Above mistake is not deliberate but an inadvertent clerical mistake. The deponent tenders unqualified apology for inconvenience caused to this Hon'ble Court for the same.

6. That it is submitted that in total 68 (21+03+37+7) cases, registered against 34 Former/Sitting MPs/MLAs in the State of Haryana, are pending out of which 21 cases are under trial in the State as mentioned in the status report dated 23.05.2021 submitted by the deponent, 03 cases have been transferred to CBI and 44 cases are under investigation. These cases stand registered against 02 sitting MP/MLA of outside Haryana and 10 Sitting/Ex-MLAs of Haryana.”

He submits that individual detail of the stage of each case is annexed along with the affidavit as Annexures R-1 and R-2.

Mr. Tinna submits that entire information has been furnished to this Court on the last date of hearing in its affidavit dated 22.5.2021.

At this stage, Mr. Khosla has referred to para 9 and 10 of the judgment in **Ashwani Kumar Upadhyay v. Union of India and another**, WP (Civil) No.699 of 2016. Same are reproduced as under : -

“9. From the report of the learned amicus, it is revealed that, at present, there are around 4442 cases, which are currently pending against the MPs and MLAs (sitting and former). Nearly 413 of the above cases pertain to

offences punishable with life imprisonment, out of which 174 cases are against sitting MPs and MLAs. He also pointed out that there were drastic delays in the disposal of the aforesaid cases. For example, in the States of Uttar Pradesh and Bihar, there are pending cases relating to the year 1991. Shockingly, in the States of West Bengal and Punjab, there are pending cases pertaining to the years 1981 and 1983 respectively. Many of the pending cases are still at the appearance stage. Further, in 352 cases the trial has been stayed by either the High Court or this Court.

10. Taking into account the above, the learned amicus has made certain suggestions for expeditious disposal of pending cases against MPs/MLAs (sitting or former), which are reproduced below:

“E. SUBMISSIONS

In the aforesaid circumstances, the following submissions are made for ensuring expeditious trial of cases where MPs/MLAs are accused:

(i) Special Courts in every district for MPs/MLAs:—

- a. Each High Court may be directed to assign/allocate criminal cases involving former and sitting legislators to as many Sessions Courts and Magisterial Courts as the respective High Courts may consider proper, fit and expedient having regard to the number and nature of pending cases. Such decisions may be taken by the High Courts within four weeks of the order.
- b. The State Governments will issue necessary notification in terms of the recommendation of the High Court within two weeks from the receipt of the recommendation.
- c. Case records to be transferred expeditiously to the Special Courts.

(ii) Practice Directions:—

- a. Special Courts will give priority to the trial of cases in the following order:—
 - i. Offences punishable with death/life imprisonment;
 - ii. Offences punishable with imprisonment for 7 years or more;
 - iii. Other offences.
- b. Cases involving sitting legislators to be given priority over former legislators.
- c. Forensic laboratories will give priority in furnishing the report in respect of cases being tried by the Special Courts and will submit all pending reports within one month.
- d. State Governments/UTs will appoint/designate at least two Special Public Prosecutors for prosecuting cases in the Special Courts in consultation with District and Sessions Judge in the concerned District.
- e. No adjournment shall be granted except in rare and exceptional circumstances and for reasons to be recorded.
- f. The Superintendent of Police of respective Districts shall be responsible

to ensure production of accused persons before the respective courts on the dates fixed and the execution of NBWs issued by the Courts.

g. The SHO of the concerned police station shall be personally responsible for service of summons to the witnesses and their appearance and deposition in the court.

h. Courts will use technology of video conferencing for examination of witnesses and appearance of the accused persons, to the extent possible.

(iii) Cases under stay:—

a. This Hon'ble Court in Asian Resurfacing of Road Agency Pvt. Ltd. v. CBI, (2018) 16 SCC 299, held as under:—

“If stay is granted, it should not normally be unconditional or of indefinite duration. Appropriate conditions may be imposed so that the party in whose favour stay is granted is accountable if court finally finds no merit in the matter and the other side suffers loss and injustice. To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court. This timeline is being fixed in view of the fact that such trials are expected to be concluded normally in one to two years.”

In view of the law laid down in the aforesaid case, trial courts to proceed with the trial notwithstanding any stay granted by the High Court unless fresh order is passed extending the stay by recording reasons.

b. In the alternative, Registrar Generals may be directed to place the matters involving MPs and MLAs before Hon'ble the Chief Justice for appropriate orders for urgent listing of such cases.

(iv) Witness Protection:—

a. Witness protection in all such cases is essential having regard to vulnerability of the witnesses and the influence exercised by the legislators facing criminal trials. This Hon'ble Court in the case of Mahender Chawla v. Union of India, (2018) 16 SCC 299 has framed “Witness Protection Scheme, 2018” and made it applicable to all the States till the enactment of suitable legislation by the Parliament or State legislatures.

b. Trial courts shall consider granting of protection under the aforesaid scheme to all the witnesses, without any application by the respective witnesses.

(v) Monitoring by High Courts

a. Each High Court shall register a Suo Moto case with the title “In Re: Special Courts for MPs/MLAs” to monitor the progress of cases pending

in the State and ensure compliance of directions of this Hon'ble Court.

b. The writ petition, so registered shall be heard by a Division Bench of the High Court to be constituted by the Chief Justice.

c. A Senior Advocate shall be appointed as Amicus Curie.

d. The State shall be represented by the Advocate General or an Additional Advocate General.

e. A senior Police officer of the rank not below Inspector General of Police shall be present in the Court in each hearing to furnish requisite information, as and when required.

f. Each Special Court will send a monthly status report to the High Court and the High Court, on examination of the same, will issue necessary directions to ensure speedy disposal of cases.

g. The case shall be heard by the High Court at such interval as may be necessary; however, at least once three months."

States as well as Central agency would ensure that the aforesaid order is examined by all the respective investigating officers to ensure due compliance. This Court shall also be apprised on the next date of hearing of inordinate delay, if any, in culmination of investigation(s) pending before various investigating agencies. Needless to observe that undue delay in concluding an investigation is infringement to right to fair and expeditious investigation and trial which flows from Article 21 of the Constitution.

Pursuant to order dated 25.2.2021, report from District & Sessions Judge have been received except one i.e. District & Sessions Judge, Bathinda. Reminder be sent to the said Court forthwith.

To come up on 19.7.2021.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

May 27, 2021
Paritosh Kumar