

Raj Jit Singh Hundal vs State Of Punjab on 3 August, 2023

Author: G.S. Sandhawalia

Bench: G.S. Sandhawalia

Neutral Citation No:=2023:PHHC:0966

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Neutral Citation No. 2023:PHHC:096648-DB

CRM-M-35682-2023

Reserved on: 27.07.2023

Decided on : 03.08.2023

Raj Jit Singh Hundal

....Petitioner

Versus

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN

Present: Mr.Vikram Chaudhri, Sr.Advocate
with Mr.Sangram Singh Saron, Advocate
Mr.Keshavam Chaudhary, Advocate
Mr.Parvez Chaudhary, Advocate
and Ms.Hargun Sandhu, Advocate for the petitioner.

Mr.Gaurav Garg Dhuriwala, Addl.A.G., Punjab.

G.S. Sandhawalia, J.

The petitioner seeks anticipatory bail under Section 438 Cr.P.C. in FIR No.1 dated 12.07.2012 registered under Sections 21, 22, 59(2)(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'NDPS Act') and Sections 218, 466, 471, 120-B IPC, PS STF, SAS Nagar.

2. The said relief has been denied by the Addl.Sessions Judge, SAS Nagar, Mohali on 21.07.2023 by rejecting the arguments of the Senior Counsel who had tried to raise various procedural flaws regarding his nomination as accused apart from the fact that the prosecution was vitiated with malice and that he was being made a scape-goat in the tug-of-war between the higher officials of the

Police Department. It was noticed that the nomination as an accused was on the ground that a Special 1 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB Investigation Team (SIT) was formed by the orders of this Court and as per the reports of the SIT, petitioner's involvement with one Inderjit Singh had come forth who was also a police official found to be closely associated with the present petitioner. Since this Court had been monitoring the issue of drug menace in the State of Punjab it had been noticed that the State Government was taking action on account of opening of the SIT reports and therefore, there could be no ground for release on anticipatory bail.

3. Merely because in the letter dated 17.04.2023 of the Addl.Chief Secretary addressed to the DGP, Punjab to nominate the petitioner, the objection taken that directions were issued to the Investigating Agency to proceed in a particular manner was held not sufficient for the grant of anticipatory bail. Similarly, the argument that since the trial of the co-accused was also pending and he was already charge-sheeted, it was for the Trial Court to summon him as an accused was also rejected on the ground that the SIT reports was lying in sealed cover before this Court and on opening of the same, liberty had been given to the State to take action on the said reports and State Government had accordingly started the said proceedings. Resultantly, it was held that there was apparently prima facie involvement of the applicant and his connivance with Inderjit Singh in the said FIR and keeping in view the fact that provisions of Sections 29 & 59(2)(b) of the NDPS Act read with Section 120B IPC was also involved and there was commercial quantity of contraband recovered from the co-accused, Inderjit Singh, the bar under Section 37 of the NDPS Act was also pressed into service while rejecting the anticipatory bail application. Thus, keeping in view the fact that petitioner was a senior police official and was alleged to have connived 2 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB with the co-accused to commit offences under the NDPS Act instead of removing the drug menace, the benefit had been denied while rejecting the argument that bail was rule and jail is the exception while coming to the conclusion that custodial interrogation was required which was one of the ground to decline the anticipatory bail.

The arguments:

4. Mr.Chaudhri, in his usual vehement style has tried to convince this Court that the involvement of the petitioner was regarding the service benefits given to the co-accused, Inderjit Singh in the form of posting, double promotions and therefore, it was not necessary for his arrest and he could join investigation. An effort was also made to convince this Court that the SIT report was bad as the Members themselves had differed when the final report was submitted on 08.05.2016 and the Head of the SIT himself had apprehensions of being involved in criminal cases at the behest of his the then superiors and also the fact that he had a service litigation with one of them.

5. Mr.Dhuriwala, on the other hand, appearing for the State, very succinctly has managed to nip the argument of the Senior Counsel to point out that the involvement of the petitioner in the said FIR was right there from day one since even in the final report which was submitted way-back on 17.10.2017, it had come forth from the main

accused that his superior, the then SSP Raj Jit Singh Hundal, the present petitioner had all the knowledge regarding the recovery effected from him and the money he used to take from the people in this regard. It was pointed out that at that point of time also, the enquiry was going on against the petitioner and on account of his apprehension he had filed an application before this Court

3 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB and at his behest, the SIT had been constituted which also had further confirmed his involvement.

6. It was accordingly argued that it was a case of custodial interrogation as the Division Bench of this Court at that point of time had initiated this exercise headed by the then Chief Justice who kept in mind the disease of narco-terrorism in its larger perspective and the Bench had been monitoring the issue. On an affidavit having been filed, it was noticed that there were 3 cases under the NDPS Act read with different provisions of the IPC against Inspector Inderjit Singh who was found to be in collusion with drug traffickers and thus, directions had been issued to the Head of the Special Task Force (STF) who was the complainant in that case which was then headed by Shri Harpreet Singh Sidhu, IPS, the then Addl. Director General of Police. On account of being falsely implicated and on account of having apprehensions from the then Head of the STF on an application having been filed at the instance of the petitioner, the SIT had been constituted of (i) Mr. Siddharth Chattopadhyaya, IPS, 1986 Batch, DGP (HRD); (ii) Mr. Prabodh Kumar, IPS, 1988 Batch, ADGP- cum-Director, Punjab Bureau of Investigation, Chandigarh and (iii) Kanwar Vijay Pratap Singh, IPS, 1998 Batch, presently posted as IGP, ATS.

7. It was accordingly submitted that in view of the provisions of Section 37 of NDPS Act also, at this stage, for the relief of anticipatory bail, this Court would not grant the indulgence of any protection to a police official who was prima facie found involved in the drug trade. Accordingly, it is submitted that since this Court itself had given the State a free-hand to look into the reports and take action, the ground of interim 4 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB protection would frustrate the whole process which has been achieved by the high ranking team.

The background and reasons for denial of relief:

8. It is to be noticed that CWP-20359-2013 titled Court on its own Motion Vs. State of Punjab was initiated on a letter received from Shri Shashi Kant, Retired IPS Officer, highlighting the drug menace in the State of Punjab. Various status reports had been called for, for over a decade in the said case and a large number of enforcement agencies including the Narcotics Control Bureau, Ministry of Home Affairs, Enforcement Directorate, Central Bureau of Investigation, Police Department in the State of Punjab, Haryana and U.T. Chandigarh are party.

Directions were given to take steps for extradition of persons who were involved in the drug trade and directions had been given to explain why the red corner notices issued to the said persons who

had not been arrested had not been implemented and for identification of the drug supply within and outside the State of Punjab. Various directions were issued to constitute the expert team comprising a Senior Professor of the PGIMER/Medical Colleges and State Drug Controller etc. to recommend the revised module of curriculum for schools and colleges on the drug menace apart from the fact that constitution of District Level Committee was directed ensuring that people undergoing treatments in de-addiction centre being treated would be the best source to identify the drug trafficking/supply at local levels.

9. In pursuance of various directions issued by this Court, Government of Punjab had constituted a Special Task Force (STF) headed by the State DGP under the direct control and supervision of the Chief Minister, Punjab. The objectives of the STF was regarding criminal 5 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB prosecution of all those indulging in drug peddling, supply and distribution, rehabilitation with compassion and sympathy for those who have become habitual of drug intake/consumption and mass awareness programme. The functions were also to develop strategies, measures and methods to enforce the law against drug trafficking, prevent drug abuse, rehabilitate the drug victims and co-ordinate with other governmental agencies and district police, GRP and other police units and to recommend disciplinary action and/or criminal action against the police, health and officials of other departments found involved in illegal/unlawful activities related to drug trafficking that come to its notice. The STF was to submit fortnightly progress report to the Chief Minister through the DGP and the review of the progress was to be seen on regular periodic intervals and the said STF was to interact with the District Police officials.

10. Apparently, an affidavit dated 03.10.2017 had been filed by Shri B.Srinivasan, Addl.Secretary, Health & Family Welfare, Punjab in the above-said case wherein it had been mentioned that there were three criminal cases registered. In the said affidavit, it transpires that there was a report which showed that the STF was working to break the nexus between the law enforcement agencies and drug traffickers. The details of the FIR regarding the involvement of Inderjit Singh in the said case reads as under:

"12. STF is working to break the nexus between the law enforcement agencies and drug traffickers. As a part of this drive, STF has registered the following criminal cases against police officers, which are under investigation:

i. FIR No.1, dated 12.06.17, u/s 21, 22, 59(2)(b) NDPS Act, 1985 & 218, 466, 471, 120-B IPC, PS STF, SAS Nagar. ii. FIR No.2, dated 25.07.17, u/s 21, 29 NDPS Act, 1985 & 365, 384, 120-B IPC, PS STF, SAS Nagar.

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11. The involvement of the petitioner in the present case which was noticed by the then Division Bench on the suggestion of the Amicus that Inspector Inderjit Singh had been allegedly found to be

in collusion with the drug traffickers and that he was closely associated with the present petitioner who was then posted as Senior Superintendent of Police, Moga. Resultantly, directions were issued that the STF headed by Mr.Sidhu would focus on the complicity of the present petitioner of breaking the nexus between the law enforcement agencies and the drug traffickers. Directions were also given to the said officer to file a status report by way of his own affidavit and apprise the Court with the outcome of the enquiry/investigation carried out by the STF in this regard, which would be clear from the order dated 28.11.2017. Para No.6 of the said order reads as under:

"[6] Shri Anupam Gupta, learned Senior counsel has taken us through the brief report on the Special Task Force, Punjab, which was appended alongwith affidavit dated 03.10.2017 filed by Shri B.Srinivasan, Additional Secretary, Health and Family Welfare, Punjab. Para 12 of the said report unveils that STF is working toward breaking the nexus between the Law Enforcement Agency and drug traffickers. It is disclosed that as a part of this drive, STF has registered three criminal cases under the Narcotics Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the NDPS Act') read with different provisions of Indian Penal Code. Shri Gupta informs that as per media reports, in one of the cases the investigation is complete and charge-sheet has been filed and one Inspector Inderjit Singh has been allegedly found to be in collusion with drug traffickers. Shri Gupta further informs that as per the information gathered by him, Inspector Inderjit Singh is closely associated with one Mr.Raj Jeet Singh, who is presently 7 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB posted as Senior Superintendent of Police at Moga. We are informed that in the past also, Inspector Inderjit Singh was transferred to the same district wherever Mr.Raj Jeet Singh was posted as Senior Superintendent of Police. Shri Gupta Submits and rightly so that it is imperative upon STF headed by Shri Harpreet Singh Sidhu to focus on the complicity of Mr.Raj Jeet Singh, if any, in the context of breaking the nexus between Law Enforcement Agency and drug traffickers. We, thus, direct Shri Sidhu to file a status report by way of his own affidavit and apprise the Court with the outcome of the enquiry/investigation to be carried out by STF in this regard."

12. A perusal of the said FIR (Annexure P-4) would go on to show that Inderjit Singh, the former Inspector, CID, Tarn Taran was alleged to be involved with the smugglers of narcotics and that he himself had been organizing smuggling of the narcotics through various associates. The allegation was that he had initiated the process of various cases under the NDPS Act in which commercial quantities of narcotics were recovered. Since he was only having a substantive rank of Head Constable acquittal had been recorded in cases as he was not competent to investigate the case as he being not a regular Assistant Sub-Inspector. The complainant was the STF itself and in the final report prepared, one Jaswant Singh, DSP had not been arrayed as an accused having been made an approver whereas there were 3 other accused including Ex-Police Official, Ajaib Singh. It was found that there was a pattern wherein in connivance with the drug smugglers in order to weaken the case of the prosecution and benefitting the accused in cases of heavy recovery, Inderjit Singh's name was being forwarded as Investigating Officer which had been eventually leading to acquittal of the accused on account of the fact that the notification of the State Government under the Act was only

8 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB empowering officers over and above the rank of Assistant Sub-Inspector to exercise the powers specified under Sections 42 & 67 of the Act.

13. During the course of investigation, it transpires, as noticed above that the present petitioner was involved and therefore, he was asked to join investigation within 6 days of the FIR being lodged. A perusal of the final report would also go on to show that apart from the heavy quantity of drugs, various weapons had also been recovered including a AK-47 apart from heavy currency recovery of Rs.16,50,000/-+ 3550 pounds of foreign currency and apart from various weapons in the form of pistols and revolvers besides 4 kgs of heroin and 3 kgs of smack from the persons involved in the said cases. It had further transpired that there were seizure from one Gurjeet Singh, smuggler of 13 kgs of heroin and recovery of Rs.60 lakhs and around 20 tolas of gold part of which was misappropriated and pressure was put to the family of the said person that immoveable property should also be transferred in the name of one Balwinder Singh. Accordingly, challan had been presented on 20.11.2017 before the Trial Court. Resultantly, charge had been framed on 04.08.2018 against the other accused while dismissing the application of the accused, Ajaib Singh for segregating the case.

14. At that stage, application bearing CM-18041-2017 in the main writ petition came to be filed by the petitioner for entrusting the investigation to an officer other than Shri Harpreet Singh Sidhu. Resultantly, vide order dated 15.12.2017, the earlier directions dated 28.11.2017 in para No.6 were modified at the instance of the petitioner himself and the SIT was constituted. The said modification reads as under:

9 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB "[4] The aforementioned application has been moved in the backdrop of the directions issued by this Court vide order dated 28.11.2017, in para-6 whereof, this Court took cognizance of the information given by Mr.Anupam Gupta, Senior Advocate during the course of hearing and having regard to the nature and gravity of the allegations made against the applicant-Raj Jit Singh Hundal, SSP, Moga, a direction was issued to the STF headed by Harpreet Singh Sidhu to investigate the issue of complicity of the applicant in the context of breaking the nexus between Law Enforcement Agency and drug traffickers. The Head of the STF was directed to file status report by way of his affidavit. It is averred in the application by Raj Jit Singh, SSP, Moga that he is not likely to get a fair and impartial investigation at the hands of Mr.Sidhu on account of later's alleged personal bias against the applicant.

[5] We have not gone into the veracity of the allegations as neither any notice was issued to Mr.Harpreet Singh Sidhu nor his view- point is otherwise on record. Learned Advocate General, Punjab has nevertheless refuted the allegations made by the applicant against Mr.Harpreet Singh Sidhu, head of SIT though he fairly states that he has no objection if the investigation of the allegations made against Raj Jit Singh Hundal, SSP, Moga is entrusted to a team of officers as may be chosen by this Court.

[6] Owing to the fact that the applicant apprehends denial of fair and impartial investigation with reference to the allegations levelled against him in a section of media, we deem it appropriate to modify para-6 of our order dated 28.11.2017 to the extent that the allegations or complicity of Raj Jit Singh Hundal, SSP, Moga in respect of his alleged association with Inspector Inderjit Singh, emanating out of FIR No.1 dated 12.06.2017, be investigated by a Special Investigation Team comprising (i) Mr.Siddharth Chattopadhyaya, IPS, 1986 Batch, DGP (HRD); (ii) Mr.Prabodh Kumar, IPS, 1988 Batch, ADGP-Cum-Director, Punjab Bureau of Investigation, Chandigarh, and (iii) Kunwar Vijay Pratap Singh, IPS, 1998 Batch, presently posted as IGP, ATS.

[7] The SIT, headed by Mr.Siddharth Chattopadhyaya, shall report to this Court of the outcome of the investigation directed herein- above and shall submit its first status report in a sealed cover on the next date of hearing, i.e., 31.01.2018.

10 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB CM stands disposed of."

15. The SIT admittedly has submitted its report dated 30.01.2018 (Annexure P-15), 14/15.03.2018 (Annexure P-17) and 08.05.2018 (Annexure P-19). All the 3 reports are signed by the three Members and a separate report filed by the Head of the SIT has been kept in sealed cover on 08.05.2018 which is subject matter of another issue as to whether he had the authority to submit a separate report not being part of the three body team which we are considering in separate proceedings in the said case.

16. A perusal of the report dated 30.01.2018 submitted by the 3 Officers would go on to show that they had examined the Head of the then Special Task Force to which objection has been taken by Shri Vikram Chaudhri, Sr.Counsel. Similarly, Jaswant Singh, DSP (Retired) who had not been arrayed as an accused was also examined apart from the fact that Kuljeet Kaur, wife of Gurjeet Singh, the smuggler of drugs was also examined since Gurjeet Singh himself had died in a road accident while on bail. Various other persons were also examined by the SIT apart from recording the statement of Inspector (ORP) Inderjit Singh who was also dismissed from service. Similarly, petitioner was also examined and his statement was recorded. The report of the transfer and postings of both the petitioner and Inspector (ORP) Inderjit Singh were also taken into account and the fact that the said person had also FIR No.1 dated 12.02.2015 registered under Sections 7, 8, 13 (2) of the Prevention of Corruption Act, 1988 registered against him. The following conclusion against the delinquent police official was found:

"i. Smuggling drugs from Pakistan with the aid of smugglers like late Gurjeet Singh, Sahab Singh, Dalbir Singh and dismissed BSF personnel Suresh Kumar Tyagi.

11 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB ii. Plantation of Narcotic drugs as on Gurprakash Singh @ Sunny, Prem Singh and his son Satarpal Singh, who was then only 18 years old and a student of Class-XII.

iii. Nominating persons in NDPS Act cases and extorting money to give them relief through discharge and bail orders and acquittals. iv. Failing samples in connivance with Forensic Science laboratory personnel and/or delaying reports, to benefit smugglers. v. Planting fake drugs to extort money from persons."

17. After noticing that there were various FIRs in which he had misused his authority, the SIT came to the conclusion that the complicity of the present petitioner was there as he had requested for the posting of Inspector (ORP) Inderjit Singh posted at Jalandhar in the year 2013 on the ground that his services were urgently required in District Tarn Taran and therefore, he was sent from District Jalandhar (Rural) to District Tarn Taran. The present petitioner denied making such a request before the SIT which had been duly proved by getting the record summoned and the fact that the moment the said official was posted on 05.06.2013, he had posted him as Incharge of the CIA in Tarn Taran regardless of the fact that the said police official had 2 FIRs against him which was against the provisions of the Punjab Police Rules. A conclusion was also arrived at that there were 19 regular Inspectors and 41 regular Sub-Inspectors posted in the District who were senior officials and could have been given the said charge. It was also noticed that the present petitioner had certified that the said official had no criminal or departmental proceedings against him which was contrary to the record and recommended double promotion from Head Constable to Assistant Sub-Inspector and even as a Regular Sub-Inspector. A conditional order of promotion had been granted by the then higher officials/DGP/Punjab DIG/Border Range wayback in 2014 on the ground that he be promoted subject to the condition that there was no 12 of 23 Neutral Citation No.:2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB departmental enquiry or criminal case pending against him. The said official had continued to serve as a CIA staff till his transfer to District Hoshiarpur in the year 2014 and had been sent along with 4 other officials to District Hoshiarpur without any permission from the senior officers only on account of the fact that the petitioner was transferred as SSP Hoshiarpur.

18. Thereafter, another letter was written on 11.08.2014 by the petitioner to transfer the said official from Border Range, Amritsar to Jalandhar Range which covered Hoshiarpur District where he was posted. On transfer, he was given posting as CIA staff on 13.08.2014. Accordingly, it was noticed that the ACR of the said official was written as 'outstanding' and regarding his promotion recommendation that there was no punishment recorded during the said period and therefore, the petitioner had turned a blind-eye to the criminal acts of the said Inderjit Singh. The property returns of the present petitioner was also then examined and it was noticed that there was a sudden spurt in his purchasing of urban property in SAS Nagar (next to Chandigarh) from 2013 onwards when he was posted as SSP, Tarn Taran. The findings on the property returns reads as under:

"22. Annual Property Returns of Sh. Raj Jit Singh:- On perusal of the Annual Property Returns filed by Sh. Raj Jit Singh to the Government, it was observed that there is a sudden spurt in his purchasing of urban property in SAS Nagar from 2013 onwards when he was posted as SSP Tarn Taran, taking loans from private persons. In this respect. (i) The market value of these properties needs to be assessed. (ii) The credit worthiness of the private persons who have extended the loans needs to be confirmed. (iii) The income-tax returns filed by Sh. Raj Jit Singh in this period needs

to be checked."

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19. Apparently, the said report was furnished before this Court and thereafter, the second report was also furnished on 14/15.03.2018 (Annexure P-16). In the second report, details of more cases came forth and it was noticed that there were 14 cases where challan had not been presented and bail was granted due to that reason. The allegations of samples being received by the FSL and the fact that they were failing was also noticed. It was also noticed that the information had been obtained from the Chief Commissioner, Income Tax regarding the annual returns filed by the present petitioner and the scrutiny including the fact that whether there was any permission taken for purchasing the said properties from the DGP. It was noticed that petitioner had filed 3 show cause notices against the said Inderjit Singh without any proper explanation just before recommending him for double promotion. The 50 drug samples failed were also being examined on the fact that they were planting fake material for extorting money from the said persons whereas the actual drugs recovered were made to fail to help smugglers in return for illegal gratification. The cases registered in Tarn Taran was also examined in the second report.

20. Eventually, in the third report dated 08.05.2018 submitted by all the 3 officers (Annexure P-19) the Three Body Team had castigated the present petitioner after coming to the conclusion of his complicity with Inderjit Singh (ORP) who was apparently smuggling drugs from Pakistan with the help of various smugglers and planting narcotic drugs and nominating persons in Narco-cases and extorting money to get relief by way of discharge applications or the bail applications. Samples had been got failed in connivance with the Forensic Science Laboratory personnels and fake drugs had been planted to extort money. The assets of the present 14 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB petitioner and his off-springs and the property returns were also taken into consideration by the SIT which examined various persons including the property dealers and vendors regarding the properties purchased by the petitioner and his immediate family from the year 2013. The said chart would go on to show that there were transactions of various properties in close vicinity of Chandigarh namely in District SAS Nagar. It was found that the properties were undervalued to a very large extent and that the proceeds from the drug trade were being laundered and there were also citizens of foreign countries involved. The said report along with another independent report submitted by the Head of the SIT was also filed on 08.05.2017. The then Division Bench had kept all the 3 reports in sealed cover and the relevant part of the order dated 23.05.2018 reads as under:

"(1) The SIT headed by Mr. Siddharth Chattopadhyaya, IPS, constituted vide order dated 15.12.2017, has submitted its report dated 08.05.2018 in a sealed cover to the Registrar Judicial of this Court. Another report of the same date is said to have been submitted by Mr.Chattopadhyaya alone as it is not signed by two other members of the SIT. The said report has also been submitted in a sealed cover. Earlier also, the SIT had submitted two reports dated 01.02.2018 and 15.03.2018. All these reports need to be examined in conjunction with reference to the issues formulated by this

Court or the task assigned to the SIT by way of orders passed from time to time. The Registrar Judicial would produce the sealed reports/entire record before us on the day and time as would be separately intimated to him, for our indepth consideration of these reports."

21. The matter was then listed on various dates before another Bench comprising of the then Hon'ble Chief Justice and was adjourned on various dates on the request of various parties, with affidavits and reports being filed. On 13.08.2021, in pursuance of the above order, the matter was heard by another Co-ordinate Bench and apparently after perusing the 15 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB report, the matter was transferred on account of the fact that one of the Members had recused. Thereafter, the matter was listed before another Co-ordinate Bench and the sealed covers were produced by the Registrar (Judicial) on 26.10.2021 for the perusal of the Court and thereafter, adjourned on various dates. Another learned Judge recused on 01.02.2022 and fresh status report was called for by the then Co-ordinate Bench and in pursuance of that more reports were submitted on 06.07.2022. Another Learned Judge recused from the proceedings on 17.08.2022. On 31.08.2022, various reports and affidavit were filed and the matter was listed before one of us (G.S.Sandhawalia J.). On 27.01.2023, specific application was filed bearing CM-266-CWP-2023 for getting opened the said reports. Resultantly, we had opened all the reports in question which had been submitted and directed that photocopies be given to the State except the third report dated 08.05.2018.

22. In the reply filed by the State of Punjab, it had been averred that the reports were lying in sealed cover with the Court and the State of Punjab was duty bound to comply with the directions which may be passed by this Court in pursuance of the report submitted by the SIT. The matter was then adjourned on account of death of the mother of Senior Counsel on 15.02.2023. On 28.03.2023, we had noticed in detail the history of the said case and also noticed that there was service litigation regarding the head of the SIT Mr.Chattopadhyaya and Mr.Dinkar Gupta, the earlier D.G.P. and accordingly issued notices to the concerned persons. However the single report sent by Mr.Chattopadhyaya had been kept in sealed cover after perusal and continues to be kept in sealed cover. All the other reports were provided to the State of Punjab and it was directed that the same be indexed and kept in a separate file by the office. Resultantly, 16 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB we had also directed vide order dated 28.03.2023 that it would be open to the State to take action on the basis of the said report except of the report of Mr. Chattopadhyaya in his personal capacity. Para No.19 of the said order reads as under:

"19. However, it is open to the State to take action upon the reports dated 01.02.2018, 15.03.2018 and 08.05.2018 of the SIT and also the other reports submitted by other officials which we have indexed separately, in case they wish to do so, except the report dated 08.05.2018 submitted by Mr. Chattopadhyaya in his personal capacity."

23. On the receipt of the said report, apparently the State passed order dated 17.04.2023 whereby it took into account the reports of the SIT and came to the conclusion that there was no iota of doubt to prove the complicity of the present petitioner with Inderjit Singh (ORP) Inspector already

dismissed from service and the fact that they had misused and abused their official position to mint money. The reasoning given in the report weighed heavily with the State Government and accordingly, while coming to the conclusion that the money had been generated from supply of narcotic drugs and use of criminal and anti-national activities, a conclusion was arrived at that the present petitioner was also instrumental to the said activities by misusing his official position. Accordingly, he was dismissed while invoking the provisions of Article 311(2) (b) of the Constitution of India and Rule 13(ii) of Punjab Civil Services (Punishment & Appeal) Rules, 1970. It was accordingly noticed that the SIT had also given various opportunities to the present petitioner. Apparently on the same date, letter was also written to the Director General of Police, Punjab whereby recommendation was made that he should be nominated as a accused in the FIR in question under Section 120-B IPC and that 17 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB investigation be conducted into FIR No.1 dated 12.06.2017 under Section 59(2)(b) of the NDPS Act which was already registered. The Enquiry Officer to be looking into all the litigations was to be a senior police officer so that role of all the concerned senior officials however highly placed and who have directly or indirectly helped in the drug trafficking/smuggling was to be examined. On the very next day, on 18.04.2023, Shri R.K.Jaiswal IPS, ADGP, STF Punjab was appointed as the Investigating Officer in which the present petitioner is an accused.

24. Resultantly, an effort was made to arrest him which led to the filing of an application before the JMIC, SAS Nagar. In such circumstances, arrest warrants were issued on 01.05.2023 and on 18.05.2023, fresh warrants were issued against the said officer. The petitioner filed an application before the Magistrate for recall of the order (Annexure P-35) and took no steps to file an application for anticipatory bail or to join investigation though all along in knowledge of the proceedings before this Court. A preponement application was filed by the State as the case was pending for 03.07.2023 which was eventually heard on 06.06.2023 by the Magistrate. Resultantly, the petitioner approached the Apex Court in W.P. (Crl.) No.269/2023 and also in SLP challenging the order dated 28.03.2023 passed by us and order dated 06.06.2023 and the matter was disposed of on 20.06.2023 by the following order:

Having heard learned senior counsel for the petitioner and on perusal of the prayers sought for in this writ petition, we find that it is just and proper that the petitioner approaches the High Court under Article 226 of the Constitution of India seeking the aforesaid prayers or any other appropriate prayer. In the 18 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB circumstances, the writ petition is dismissed reserving liberty to the petitioner to seek appropriate prayers before the High Court.

Pending application stand disposed of.

SLP((CRL.) Diary No(s). 21445/2023 Permission to file SLP is granted.

Learned senior counsel submitted that the petitioner would not press this special leave petition. However, liberty may be reserved to the petitioner to seek modification of the impugned order or

seek any other appropriate direction in the matter. His submission is placed on record.

The special leave petition is dismissed as not pressed with the aforesaid liberty being reserved to the petitioner.

Pending applications stand disposed of."

25. Thereafter, the petitioner filed CWP-14021-2023 which was listed before us and we disposed it of on 12.07.2023 with liberty to the petitioner to file an application for anticipatory bail since prayer had been made for quashing of the status reports in which he had been castigated and also challenging the communications passed by the State nominating the petitioner as an accused. Resultantly, he approached the Addl. Sessions Judge but with no success, as noticed above.

26. The above sequence of events would go on to show that it was only on account of the fact that the matter was pending hearing before this Court, the State did not proceed against the petitioner for all these long years. It was only when the reports were perused which were opened and supplied to the State, it has taken action. The contention of the Senior Counsel for the petitioner of malice and bias is likely to be rejected outrightly as apparently different senior police officials have had similar opinion regarding the complicity of the petitioner. It is not for us to opine upon these reports as argued by Mr. Chaudhri as it is within the purview of the investigating agencies who had concurred on his role. The STF had 19 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB also raised suspicion at the activities of the petitioner as would be clear from the final report dated 08.05.2016 submitted against the other co-accused. The petitioner had, at that point of time, filed an application for impleadment and for change of the Investigating Officer and had got a positive order in his favour on account of some apprehensions having been raised against the then Head of the STF. An independent team of 3 Senior Officers, as noticed, had gone into the allegations and by recording the statement of several people, as noticed above, they have not been able to come to a different conclusion and have not exonerated the petitioner. It has also been brought to our notice that FIR No.15 dated 20.04.2023 has also been registered under Sections 13(1)(b) read with Section 13(2) of the Prevention of Corruption Act, 1988 registered against the petitioner in view of the findings of the SIT regarding his amassing of huge wealth in form of immoveable properties.

27. The allegations are serious and custodial interrogation would necessarily be required for finding out the manner in which the petitioner was operating along with his sub-ordinate officials and subverting the system he was supposed to head in a positive manner.

28. The Division Bench has been monitoring the said proceedings for the last decade and it would be a miscarriage of justice that at the end of it and on the investigation conducted by the senior officers, the petitioner is granted the benefit of anticipatory bail as we ourselves on 28.03.2023 had given liberty to the State to take action on the said reports. As noticed, the petitioner has been given several opportunities to project his stand before the senior officials and he has failed to do so. The factum of having acquired expensive properties during the period around Chandigarh when he was posted at Tarn Taran which is a border district 20 of 23 Neutral Citation

No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB and facing the largest number of matters under the NDPS Act, is serious matter of concern for the health and safety of young generation to save them from drug menace and which has already been consuming the precious time of this Court. Apparently, instead of being at the forefront to break the nexus of the smugglers and drug trade, the petitioner seems to have been indulging in the trade of drugs and it is on that account, his role seriously needs to be investigated as apparently he has been "running with hare and hunting with the hounds". The investigation, thus, cannot be curtailed while granting any interim protection to the petitioner who himself is a well seasoned customer and granting any such benefit would lead to curtailing the right of the Investigating Officers to get to the bottom of the sordid story of drug trafficking whereby involvement of the police officials in pushing innocent persons into false cases had been uncovered. While discussing the contents of the challan, we had already noticed the heavy commercial recoveries in which there have been acquittals recorded and therefore the proverb of "the fence eating the crop comes to mind".

29. The curtailment provisions under Section 37 of the NDPS Act is a bar which the learned Sessions Court has well kept in mind. The Apex Court in Union of India Vs. Prateek Shukla, 2021 (5) SCC 430 set aside the bail which had been granted to the accused while rejecting the argument that the said person had resigned from the company the premises from which huge quantity of the controlled substance had been recovered. The allegation of the prosecution was that he was a member of a international drug syndicate and had entered into a conspiracy for diversion, illegal storage, sale, purchase and export of the controlled substance had been kept in mind. Resultantly, keeping in mind the provisions of Section 37 of the NDPS Act, it was held that merely because 21 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB a person was having a Bachelor of Technology degree would not be extraneous circumstance for grant of bail. The said principle would also apply herein.

30. In similar circumstances, in Union of India through Narcotics Control Bureau, Lucknow Vs. Md.Nawaz Khan, 2021 (10) SCC 100, the bail granted by the High Court of Allahabad was also set aside while noticing that huge amount of recovery was effected from the vehicle in which the petitioner was travelling which was hidden in the front bonnet of the vehicle. Resultantly, keeping in view the provisions of Section 37 of the NDPS Act, it was held that there is a menace of drug trafficking in the country and merely in the absence of recovery of the contraband from the accused would not be a ground for grant of bail since stringent scrutiny was required under the said provisions and a finding had to be recorded that there were reasonable grounds to believe that the accused has not committed an offence.

31. Another disturbing factor which weighs in our mind is that petitioner is a very high ranking police officer and the chances of him not cooperating with the investigation and also threatening the witnesses and winning them over upon whom the investigation might rely upon including the approver who is also a police official. In such circumstances, we are of the considered opinion that the benefit of anticipatory bail to the petitioner cannot be permitted. It is also to be noticed that from the date the report had been opened i.e. 28.03.2023, the petitioner has made no efforts to join investigation and as noticed, has only been filing applications before the Magistrate to avoid himself from being taken into custody. The argument that the petitioner was not aware of the said

proceedings is also without any basis as apparently he had filed an 22 of 23 Neutral Citation No:=2023:PHHC:096648-DB Neutral Citation No. 2023:PHHC:096648-DB application for change of Investigating Officer right at the start, at that point of time also which was allowed on 15.12.2017.

32. Thus, in view of the above cumulative discussion, we are of the considered opinion that it is not a fit case for grant of anticipatory bail and resultantly, the present petition is dismissed.

(G.S. SANDHAWALIA) JUDGE (HARPREET KAUR JEEWAN) 03.08.2023 JUDGE sailesh
Whether speaking/reasoned Yes Whether Reportable : Yes Neutral Citation
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