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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7964-2024 (O&M)

KULDEEPAK MITTAL

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

Present: Mr. R.K. Jaswal, Advocate
for the petitioner.

Mr. Gurminder Singh, Advocate General, Punjab with
Mr. ADS Sukhija, Addl. AG, Punjab.
Mr. J.S. Rattu, DAG, Punjab.

Mr. Puran Singh Hundal, Sr. Advocate with
Mr. Shiv Kumar Sharma, Advocate
for respondents No.4 to 6.

1. In compliance of order dated 27.08.2024, Mr. Gaurav Yadav, Director General of Police, Punjab for assistance has come present in Court today and filed the status report along-with Annexure A/1 by way of an affidavit dated 27.08.2024. The same is taken on record, copy thereof, has been supplied to learned counsel for the petitioner as well as learned Senior Counsel for respondents No.4 to 6 in Court, itself.

2. On a specific information sought by this Court, it is stated, by way of the afore-said status report filed in the form of an affidavit, that respondent No.4-Jarnail Singh Bajwa is facing prosecution in 53 FIRs across the State of Punjab, the details of which have been mentioned in Annexure A/1 attached with the said status report.

3. In para No.4 of the said status report, an assurance has been given by Mr. Gaurav Yadav, Director General of Police, Punjab that all attempts shall

be made to ensure the meticulous compliance of the directions issued by this Court in letter and spirit and to do so, further submits that the concerned officials have been instructed to conclude the investigation in all pending investigations at the earliest so that the cases can be taken to their logical conclusion.

4. On a specific query put by this Court, Mr. Gurminder Singh, learned Advocate General, Punjab has sought two weeks' time to take necessary action and to file further action taken report in the matter. It is, though, noticeable to mention here that nothing has been placed on record to show that as to why there is delay in investigation in FIR in question. Strangely, out of 53 FIRs, investigation is still pending in 39 cases, wherein, in most of the cases more than 5 years have lapsed since the registration of FIR.

5. At this stage, Mr. Hundal, learned Senior Counsel for respondents No.4 to 6 intervened to make submissions but this Court was not inclined to hear him until or unless directions issued by this Court for appearance in person of respondent No.4, is complied with, who is deliberately and intentionally evading the process of law and making a valiant attempt to subvert the judicial proceedings.

6. When Mr. Hundal was questioned about the whereabouts of respondent No.4 and as to why he has not appeared even today as well, he took shelter of an order dated 20.08.2022 passed by Honble Apex Court in SLP (Crl.) 11143-11146/2024 and laid much stress to the fact that arrest of respondent No.4 has been stayed and he is not required to appear in person and is being representing by an Advocate.

7. This Court is not impressed with the said contention of Mr. Hundal, who went on to say that he has filed an application stating that he

needs 15 days time to appear before this Court and read out para No.24 of the affidavit in that context. The excuse for non-appearance since the first date of directions issued by this Court, has been putforth by Mr. Hundal that in few cases buyers have not complied with the terms and conditions of the agreement and he has to make efforts to compromise with such complainants wherever possible and for that purpose he is arranging funds from his sources. Such an excuse is absolutely vague, having no basis and cannot be considered as cogent and plausible reason for disobeying the directions of this Court. No one can be allowed to take such liberty from the court of law and particularly a person like respondent No.4, who is an habitual offender and by no means he is entitled to any leniency or discretionary relief at this stage.

8. It would be worth noticing here that it is, vide order dated 02.08.2024 when for the first time, he (respondent No.4) was directed to come present in person but he did not appear on 05.08.2024, 13.08.2024, 22.08.2024 as well as on 27.08.2024. Even, today i.e. 28.08.2024 when Mr. Hundal, learned Senior Counsel has sought time to make submissions, this Court has refused to hear until or unless the directions of this Court is complied with. Rather, protection is pleaded by virtue of order dated 20.08.2024 passed by Hon'ble Apex Court staying his arrest, which reads as under:-

“Application for exemption from filing c/c of the impugned judgment is allowed.

Issue notice.

Permission to serve the standing counsel for the State.

In the meantime, the petitioner shall not be arrested subject to cooperation with the investigation.

However, we make it clear that the High Court is at liberty to proceed with the conduct of the trial.”

9 However, the above order has granted interim relief subject to

cooperation with the investigation, which has also not been complied with so far. It is also clear on perusal of order dated 20.08.2024 passed by Hon'ble Apex Court that it has not refrained this Court from ensuring his presence in Court and to proceed with the case further.

10. Mr. Hundal, learned Senior Counsel also argues to the extent that no action can be taken against respondent No.4, since there is no communication by any Court for the same after he has been declared proclaimed person vide order dated 04.07.2022 (Annexure P-3) passed by Judicial Magistrate Ist Class, SAS Nagar. A direction was also issued to the concerned SHO for initiating the proceedings under Section 174-A IPC.

11. At this juncture, Mr. Gurminder Singh, learned Advocate General Punjab was asked to respond who in clear words very fairly conceded that no such communication or separate order is required from any court of law to proceed against a proclaimed offender, though the petitioner has not been arrested only because of order passed by the Hon'ble Apex Court staying his arrest on 20.08.2024. Though, interestingly in an unequivocal voice to the compliance of the orders passed by Hon'ble Apex Court on 20.08.2024 vide which, respondent No.4 was granted the relief observing that he shall not be arrested subject to co-operation with the investigation. Respondent-State as well as learned Senior Counsel for respondent No.4 have admitted that he has not yet joined the investigation, therefore, the question of cooperation with the investigation does not arise at all.

12. During the course of proceedings including Mr. Gaurav Yadav, Director General of Police, Punjab as well as Counsel for respondents No.4 to 6 denied having any knowledge about the whereabouts of respondent No.4 and also did not have any answer to question as to why his presence has not been

ensured despite issuance ofailable warrants by this Court on 13.08.2024, which remained un-executed.

13. Suddenly, it was noticed by Secretary of the Court that respondent No.4, is probably monitoring the Court proceedings through Video Conferencing mode, as window of the website is kept open throughout the day by this Court, to facilitate appearance of any counsel/litigant to attend the Court proceedings through video conferencing (VC) mode. On instructions from the Bench, the command on the website was given, which caught respondent No.4 unaware, who became visible through video conferencing, to which neither the State investigating agency nor learned Senior Counsel appearing on his behalf had any clue.

14. Faced with this embarrassing situation, Mr. Gaurav Yadav, Director General of Police, Punjab candidly admitted the failure and laxity of law enforcing agency on this aspect.

15. This Court directly communicate with respondent No.4 and questioned, as to why he has not appeared in the Court so far, he pleaded guilty stating that though he is not intentionally evading the directions of this Court but being occupied in managing his affairs i.e. to arrange funds for settling the certain disputes with various complainants, he could not come to the Court. On further informing him about the nature of his act and conduct being intentional and deliberate as considered by this Court so far, show cause notice for contempt stands issued but no explanation/reply is submitted, he assured this Court to appear in person physically as and when this Court directs.

16. It is beyond an imagination to believe that at one end respondent No.4 has appeared through VC mode, today but even Mr. Hundal, learned Senior Counsel has shown ignorance about his whereabouts, representing him

in Court. Above all Chief of Police Department present in Court was also unaware and had come on record on the affidavit to say that despite all efforts including raids conducted at all suspected places, he is untraced though wanted in various FIRs by the Police for years together.

17. At this stage, Mr. Gaurav Yadav, Director General of Police, Punjab, has assured this Court of taking effective steps and to conclude the investigations in a time bound manner.

18. Yet again, Mr. Hundal, learned Senior Counsel wanted to make submissions having sigh of relief submitting that now respondent No.4 has at least joined through VC mode, he be allowed to make certain submissions. In his endeavors to justify of non-appearance of respondent No.4 despite specific directions being issued in that regard, he argued that respondent No.4 is not named in FIR No. 215, dated 27.09.2023. He, however, asserts while reading the relevant part that since respondent No.4 has been allowed bail by this Court vide order dated 31.10.2022 passed in CRM-M-50259-2022 (Annexure P-4) wherein, he has submitted his bail bonds as well, the proceedings under Section 174-A IPC could not be initiated against him. As such, he questioned the filing of present petition.

19. At the same time, he could not deny the fact that order dated 31.10.2022 passed in CRM-M-50259-2022 stands recalled and the relief granted to respondent No.4 was set aside by this Court vide order dated 20.10.2023 passed in CRM-M-42983-2023 (Annexure P-6) with certain observations, which highlighted the conduct of respondent No.4 in particular, who got the protection from this Court by making false submission to the effect that co-accused who had faced trial had already been acquitted.

20. In fact, an application i.e. CRM-34380-2024 has also been filed on

behalf respondent No.4 to place on record his affidavit as Annexure R-4/1 along-with General Diary Details bearing GD No.019, dated 11.07.2024, Police Station Kharar, SAS Nagar as Annexure R-4/2, which makes it clear that after the passing of orders dated 04.07.2024 and 11.07.2024 by this Court, he has been indicted as an accused in FIR No.215, dated 27.09.2023, under Section 174-A IPC with the observation that accused will be arrested as soon as possible for further necessary proceedings.

21. This Court cannot lose sight to the fact that respondent No.4 is declared proclaimed person by Judicial Magistrate Ist Class, Kharar on 04.07.2022 in a complaint case i.e. CIS No. CRM/73/2017, dated 09.11.2017, under Sections 406, 420 and 120-B IPC pending before Chief Judicial Magistrate, SAS Nagar, Mohali and till date, he has not associated himself in the trial proceedings since then.

22. Much stress has been laid by Mr. Hundal, learned Senior Counsel in the proceedings limited to FIR No. 215, dated 27.09.2023 but the manner in which respondent No.4 is taking the course of law for a ride, who is involved not only in single case but in 53 FIRs speaks volume for itself and such an accused do not deserve any concession or discretionary relief from this Court. Further action of respondent No.4 for not adhering the directions of this Court intentionally and deliberately also adds fuel to fire.

23. However, the arrest of respondent No.4 in FIR No. 215, dated 27.09.2023 has been stayed by Hon'ble Apex Court vide order dated 20.08.2024 passed in Petition(s) Special Leave to Appeal (Crl.) No(s). 11143-11146/2024 and the said relief is also subject to condition i.e. cooperation with the investigation, meaning thereby, he should have joined the investigation by now but he is evading the said process as well.

24. However, on assurance given by Mr. Gurminder Singh, learned Advocate General, Punjab as well as Mr. Gaurav Yadav, Director General of Police, Punjab that the investigations in all the pending FIRs will be concluded in a time frame manner, so that the cases can be taken to their logical conclusion., this Court directs the State to file a comprehensive stand within a specific time frame in which the investigations in all the pending FIRs details of which have been given in Annexure A/1 attached with the status report filed today in Court.

25. Respondent No.4 is also directed to furnish details of all immovable assets/properties including liquefied assets possessed by firms/companies, owned by him either as partner or director or individual capacity, by the adjourned date. The details of the properties/assets shall be complete in all respects with the proper identification, as per Land Revenue Record, maintained by the authorities concerned.

26. Hearing of the case is deferred for 30.08.2024, as prayed for learned Senior Counsel for respondents No.4 to 6.

27. Mr. Gaurav Yadav, Director General of Police, Punjab is exempted from personal appearance till further orders.

AUGUST 28, 2024
sham

(SANDEEP MOUDGIL)
JUDGE