

(1997) 02 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 15561-M of 1996

Avindervir Singh

APPELLANT

Vs

Central Bureau of Investigation, Chandigarh

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 553

Hon'ble Judges : K.S.Kumaran, J

Advocate : T.P.S. Tung, R.K. Handa, P.S. Hundal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Petitioner Avindervir Singh has approached this Court under Section 439 Cr.P.C. for grant of bail in case R.C. No. 33/93 dated 8.10.1993 registered at Central Bureau of Investigation, Chandigarh under Sections 193, 194, 211 and 218 read with Section 120B I.P.C., which is being opposed by the respondent.

2. Kulwant Singh, an Advocate, his wife and child were allegedly abducted and murdered. A case in F.I.R. No. 10 of 1993 dated 8.2.1993 was registered at Police Station Sadar, Ropar in this regard. One Harpreet Singh alias Lucky son of Gurmit Singh Saini was allegedly produced before the police by Avtar Singh, Lambardar, village Tapanian. Harpreet Singh alias Lucky who had allegedly surrendered before the police, made a confessional statement before the Court stating that he had kidnapped and murdered Kulwant Singh, his wife and child. The above said F.I.R. No. 10 dated 8.2.1993 was recorded on the basis of the ruqa sent by the petitioner Avindervir Singh who was the Station House Officer, Police Station Sadar, Ropar. According to the F.I.R., while the petitioner Avindervir Singh, ASIDarshan Singh, ASIDidar Singh and three constables had organised naqa near Bela Chowk Ropar and were present there, the petitioner received a secret information that Kulwant Singh and his family were kidnapped by Harpreet Singh alias Lucky and Surjit Singh with the intent to murder them. On the basis of this, the case was registered u/S 364 I.P.C.

3. But with regard to this incident, the Punjab & Haryana High Court Bar Association filed a civil writ petition before this Court praying that the investigation must be conducted by the Central Bureau of Investigation. This High Court dismissed the said Civil Writ Petition and the Punjab & Haryana High Court Bar Association preferred S.L.P. (Civil Appeal 7243/93) before the Hon''ble Supreme Court. The Hon''ble Supreme Court ordered the C.B.I. to investigate into the matter. The C.B.I. submitted its report to the Hon''ble Supreme Court stating among other things that

(1) Harpreet Singh alias Lucky who is presently facing trial in connection with the case in F.I.R. No. 10/93 of Police Station Sadar, Ropar before the Designated Court Nabha, has been falsely implicated in this case,

(2) S.I.Avindervir Singh, ASI Darshan Singh, Inspector Balwant Singh and D.S.P. Jaspal Singh are prima facie responsible for the false implication of Harpreet Singh alias Lucky in the aforesaid case and are liable for prosecution for offences under Sections 193, 194, 211 and 218 I.P.C., and

(3) that the State Government of Punjab may be directed to take suitable action against Shri Sanjiv Gupta, D.I.G., Punjab Police for lack of supervision.

4. The Hon''ble Supreme Court took note of the report of the Central Bureau of Investigation and observed that the police officers falsely implicated Harpreet Singh alias Lucky and directed that Harpreet Singh be released from jail forthwith, and also directed the Panjab Government to pay compensation to him for the sufferings caused to him because of the false implication in this case and in particular, his remaining in jail for a long period. The Hon''ble Supreme Court also observed that the appellant before them namely, the Punjab & Haryana High Court Bar Association and the prosecutor shall be at liberty to argue before the trial Court that the material collected by the C.B.I. including its report show that the police officers are prima facie responsible for the abduction and murder of Kulwant Singh and his family and are liable for prosecution for offences under the relevant provisions of the Indian Penal Code.

5. The learned counsel for the petitioner contends that the trial against Harpreet Singh alias Lucky is still pending before the trial Court that the trial Court has not appreciated the evidence before it and has not come to any conclusion that the evidence given was false or fabricated, and that there is no finding that a false charge of offence has been made with the intent to involve Harpreet Singh. The learned counsel for the petitioner further contends that for prosecution of offences under Sections 193, 194 and 211 I.P.C., it is necessary that a finding is given by the trial Court and the procedure laid down under Section 340 Cr.P.C. is followed, and when that has not so far been done, the Court itself could not take cognizance of the offences under Sections 193, 194 and 211 I.P.C. in view of the provisions contained in Section 195(1)(b)(i) Cr.P.C. The learned counsel for the petitioner also contends that except Section 194 I.P.C., the other offences are also bailable and in these circumstances, the petitioner should be granted the

relief of bail.

6. The petitioner had approached the learned Sessions Judge, Chandigarh for bail but the same was rejected by the learned Sessions Judge, Chandigarh by order dated 17.8.1996. Therefore, the petitioner has approached this Court.

7. The respondent opposes the grant of bail and the learned counsel for the Central Bureau of Investigation has also produced the copy of the order of the Hon"ble Supreme Court in Civil Appeal No. 7243 of 1993. The learned counsel for the respondent contends that the Hon"ble Supreme Court has very clearly observed that the police officers falsely implicated Harpreet Singh alias Lucky and directed him to be released from jail forthwith, and directed the Central Bureau of Investigation to file the necessary chargesheet in accordance with law and, therefore, the contentions put forth by the petitioner cannot be accepted.

8. I have heard the counsel for both the sides and perused the records. From the judgment of the Hon"ble Supreme Court, it is seen that the Hon"ble Supreme Court has observed that Harpreet Singh alias Lucky has been falsely implicated in this incident relating to the abduction and murder of Kulwant Singh and his family, and has also directed the C.B.I. to file the chargesheet and permitted the Bar Association and the prosecutor to argue before the trial Court that the police officers are responsible for the abduction and death of Kulwant Singh and his family. But, we are now concerned with the present charges whereby the petitioner has been accused of having committed offences under Sections 193, 194, 211 and 218 read with Section 120B, I.P.C. and not with the abduction and murder of Kulwant Singh and his family. Section 193 I.P.C. punishes a person for giving false evidence or fabricating false evidence while Section 194 I.P.C. punishes a person for giving or fabricating false evidence with the intent to procure conviction of capital offence. Section 211 I.P.C. punishes a person who institutes or causes to be instituted any criminal proceedings or falsely charges any person with having committed an offence without any just or lawful ground. Section 218 I.P.C. punishes a public servant who prepares an incorrect record or writing with the intent to cause loss or injury to a person or to save a person from punishment or to save property from forfeiture. The learned counsel for the petitioner contends that in view of Section 195 Cr.P.C., no Court shall take cognizance of offences under Sections 193, 194 and 211 without the complaint in writing by the Court concerned or by some other Court to which the Court concerned is subordinate; but in this case, the trial against Harpreet Singh alias Lucky is still proceeding and no finding has yet been given against the present petitioner of having committed these offences under Sections 193, 194 and 211 I.P.C. and no complaint has also been given by the concerned Court about the commission of these offences by the present petitioner to the Court. But the learned counsel for the respondent points out the finding of the Hon"ble Supreme Court that Harpreet Singh alias Lucky has been falsely implicated in this case and also the further direction of the Hon"ble Supreme Court permitting the Bar Association and the prosecutor to argue that the offences of abduction

and murder were committed by the police officers themselves.

9. Although the Hon"ble Supreme Court has so observed and granted such liberty as contended by the learned counsel for the respondent, the question still remains whether any Court can take cognizance of these offences punishable under Sections 193, 194 and 211 I.P.C. without a complaint in writing by the Court concerned. It is not stated by the respondent that any Court has given any complaint in this regard, as contemplated by the provisions of Section 195(1)(b) (i) of the Criminal Procedure Code. Therefore, the petitioner can still agitate this point before the trial Court. Further, as rightly pointed out by the learned counsel for the petitioner, the offences under Sections 193, 211 and 218 I.P.C. are bailable offences, and only the offence under Section 194 I.P.C. is nonbailable. The offence under Section 102B will depend upon the main offences.

10. Therefore, in these circumstances, I am of the view that the petitioner has got an arguable legal point, the decision of which will go to the root of the matter and is therefore, entitled to be granted the relief of bail since it is also seen that all the offences except offence under Section 194 I.P.C. are also bailable. However, observations made in this order shall not be taken as an expression of any opinion on the merits of the case, and the trial Court shall proceed with the trial of the case in accordance with law without being influenced by the observations contained in this order.

11. In the result, the petition is allowed and the petitioner is ordered to be released on bail on his furnishing surety in the sum of Rs. 25,000/ with one surety for the like sum to the satisfaction of the Chief Judicial Magistrate, Chandigarh with the condition that he shall remain and reside in the city of Ambala and report before the C.J.M. Ambala on all working days at 10.00 a.m. and sign before the C.J.M. Ambala, till otherwise ordered/or the completion of the trial in this case whichever is earlier.