(2016) 02 P&H CK 0460

In the Punjab And Haryana At Chandigarh

Case No : CRM-M. Nos. 32721 and 32162 of 2015

Bally Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 337 ELT 207

Hon'ble Judges : Surya Kant and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : Shri Baljinder Singh, Advocate, for the Petitioner; Ms. Reeta Kohli with Shri Hanspal Virk, AAGs, Punjab and Ms. Ranjana Shahi, Sr. Panel Counsel, for Enforcement Directorate, for the Respondent

Final Decision : Dismissed

Judgement

Surya Kant, J.(Oral)—This order shall dispose of CRM-M-32721 of 2015 and CRM-M-32162 of 2015 as the point in issue involved is similar in nature. Facts are being extracted from CRM-M-32721 of 2015.

2. The petitioner seeks quashing of order dated 21-7-2015 passed by the Designated Court under the Prevention of Money Laundering Act, 2002 (for short `the 2002 Act'') whereby the Special Court after forming a prima facie opinion that an offence under Section 3 punishable under Section 4 of the 2002 Act was made out, has summoned the petitioner through warrants of arrest.

3. The aforementioned order has been passed by the Special Judge in a complaint filed under Section 45(1) of the 2002 Act by the Directorate of Enforcement against the petitioner, his father and mother. From the contents of the complaint, it is revealed that various FIRs have been registered by the Punjab Police and other State Police under the provisions of the NDPS Act and recoveries were effected during the investigation of those cases. It emerged out during investigation that the petitioner''s father (Ranjit Singh Kandola) is involved in multiple drug trafficking cases and has allegedly amassed

innumerable moveable and immoveable assets through proceeds of the crime without having any known source of income. According to the Enforcement Directorate, the petitioner and his parents are not income tax payees yet immoveable properties worth crores of rupees at different places in the State of Punjab, including a hotel in Ropar and a residential house in DLF Phase-I, Gurgaon stand in the name of the family. In addition, high-end luxurious SUV/ cars like (i) two Range Rovers, (ii) one Mercedes (iii) one BMW and (iv) One Honda City are also owned by them. There are bank transactions of crores of rupees and a huge amount of cash is also lying parked in some of their bank accounts. Father of the petitioner is found to have visited countries like U.S.A., U.K., Canada, Europe, Middle East, Australia and Zimbabwe. It is interesting to note that with a view to avoid requirement of PAN Card number, most of the cash transactions are of Rs. 49,900/- i.e. below Rs. 50,000/-. The Enforcement Directorate has alleged that the petitioner or his family members did not file any income tax return; have no PAN number and the immoveable properties owned by them by making payments in cash are thus the proceeds of crime derived from trafficking and dealing in drugs.

4. The petitioner also owns some of the immoveable properties and luxury vehicles independently or jointly with his parents.

5. In the NDPS case registered vide FIR No. 60, dated 1-6-2012 under Sections 21, 29, 61, 85 of the NDPS Act at Police Station Kartarpur, District Jalandhar, the petitioner and his mother (Rajwant Kaur) were arrested but the prosecution having failed to submit the challan within the statutory period contemplated under Section 36-A of the NDPS Act that this Court vide order dated 10-3-2014 ordered their release on bail.

6. The father of the petitioner is involved in multiple cases and at present is lodged in Tihar Jail, Delhi.

7. After carrying out its own investigation into the allegations of money laundering, the Enforcement Directorate has filed Complaint No. COMA/2/2015, dated 21-7-2015 in which the petitioner is also arrayed as one of the accused. No sooner the Special Judge summoned the petitioner and his mother through warrants of arrest vide order dated 21-7-2015, the petitioner along with his mother applied for grant of pre-arrest bail which was declined by the learned Special Judge vide order dated 26-8-2015.

8. The petitioner then approached this Court for the same relief by way of CRM-M-30733 of 2015 which was also dismissed on 10-9-2015 as this Court, having regard to the principles laid down by the Hon''ble Supreme Court in (i) Padmasundra Rao and Another v. State of Tamil Nadu and others, - 2002 (3) SCC 533 and (ii) Siddharam Satlingappa Mhetre v. State of Maharashtra and others - AIR 2011 SC 312, viewed that the custodial interrogation of the petitioner in the complaint case was necessary.

9. After the dismissal of petitioner''s anticipatory bail petition by this Court on

10-9-2015, his mother (Rajwant Kaur Virk) filed the accompanying petition bearing CRM-M-32162 of 2015 seeking "quashing of the order dated 21-7-2015" whereby she has also been summoned by the Designated Court through warrants of arrest. The learned Single Judge stayed operation of that order on 19-9-2015 and later on referred the matter to list it before Division Bench in view of the orders passed by the Hon''ble Supreme Court in a bunch of NDPS cases in SLP (Crl.) No. 272 of 2015 (Maninder Singh @ Bittu Aulakh v. State of Punjab).

10. Once his mother got the interim relief, the petitioner has also filed this second petition, now questioning the legality of the order dated 21-7-2015 to the extent of his summoning through warrants of arrest.

11. We have heard learned counsel for the parties and gone through the relevant record.

12. With a view to wriggle out of the impact of the order dated 10-9-2015 whereby this Court declined pre-arrest bail to the petitioner, it is urged by his learned counsel that the nature of relief sought in the instant petition is distinct and different than the pre-arrest bail. He urges that the Designated Court ought not to have issued the warrants of arrest at the very first instance unless the Court was satisfied that the presence of the petitioner cannot be secured in the complaint case through ordinary means of summoning, namely, summons or bailable warrants. Reliance is placed on the decision of the Hon''ble Supreme Court in Inder Mohan Goswami v. State of Uttaranchal - 2007 (12) SCC 1 as well as the order passed by Gujarat High Court in Pankaj Pratabhai Thakkar v. Deputy Director (Special Criminal Application (Quashing) No. 4697 of 2014. He also relied upon an order dated 1-10-2015 passed by this Court in CRM-M-28490 of 2015 (Dalip Singh Mann and Another v. Niranjan Singh, Assistant Director, Directorate of Enforcement, Government of India).

13. As against it, learned counsel for the Enforcement Directorate has referred to averments made in the reply filed by the Assistant Director to maintain that there had been a complete non-cooperation from the side of the petitioner and his mother and they have failed to elicit any information sought by the Directorate with respect to their known sources of income, to justify the accumulation of innumerable moveable/immoveable properties. She has also referred to Section 45 of the 2002 Act according to which the offence under Section 3 of the 2002 Act is cognisable and non-bailable. She cites the decision of the Hon''ble Supreme Court in Gautam Kundu v. Manoj Kumar, Assistant Director, Eastern Region, Directorate of Enforcement - AIR 2016 SC 106 : 2016 (334) E.L.T. 195 (S.C.) which explains the legislative policy behind the 2002 Act and holds that the conditions specified under Section 45 are mandatory and need to be complied, moreso when the said provision is read with Section 65 and 71 of the 2002 Act.

14. Having given our thoughtful consideration to the rival submissions, we are

satisfied that the petitioner does not deserve to any protection against his arrest or subjection to the judicial custody for more than one reasons. Firstly, all the grounds now taken by him were very much available in the petition for the grant of pre-arrest bail which was dismissed by this Court on 10-9-2015. Secondly, there is no change in the circumstances thereafter which could possibly justify the petitioner''s second attempt to evade judicial custody.

15. The summoning of an accused in the case of a non-bailable offence through ordinary process and/or coercive means is discretion of the Court though to be exercised judiciously and by striking balance between the right to liberty vis-a-vis the legislative intendment in declaring the gravity of an offence. The only caveat is that the mode of securing presence cannot be resorted to mechanically. There ought to be due application of mind so that the reasons for invoking coercive means of securing presence are well elicited.

16. In the case in hand, the reply/affidavit unfolds that after availing the concession of bail in the NDPS case on a technical ground, the petitioner and his mother have been totally non-cooperative and have successfully stalled the further investigation being conducted by the Directorate of Enforcement. They have been reluctant even to respond the notices. The petitioner''s mother was asked to appear through summons dated 15-7-2015 in the Directorate but she chose not to appear.

17. It may be true that the petitioners are not obligated to disclose their defence but while invoking the discretionary jurisdiction, they must satisfy the conscious of the Court that the serious revelations made by the Directorate of Enforcement in its complaint are at least prima facie not trustworthy.

18. The petitioner (Bally Singh Kandola) is statedly a U.S. Citizen. One kilogram heroin is alleged to have been recovered from him and his mother. He has different bank accounts in US and UK. He has been studying abroad though he is said to have admitted in his statement before the Directorate that his parents "did not file their income tax returns". Taking into consideration the totality of the circumstances and having regard to the gravity attached by the Legislature to the nature of offences defined under the 2002 Act especially the mandatory nature of Section 45 of the 2002 Act, it cannot be said that the summoning of the petitioner through warrants of arrest is a mechanical exercise or lacks the desired application of mind. The principles laid down by the Supreme Court in Inder Mohan Goswami''s case are in the context of a private criminal complaint which originated out of a property dispute and the genesis of which lied in an agreement to sell between the accused and the complainant. These principles are distinguishable in a statutory complaint filed under the 2002 Act.

19. Similarly, the observations of this Court in Dalip Singh Mann and another''s case to the effect that the investigating agency did not arrest the petitioners in that case during the course of investigation under Section 19 of the 2002 Act, is inapplicable to the petitioner or his mother in the instant case as they have been

found to be non-cooperative with the Directorate of Enforcement. The petitioners'' contention that they have been appearing before the Directorate of Enforcement, even if correct, is inconsequential as such appearance is not a ceremonial performance unless the suspect fully cooperates with the ongoing investigation so as to take it to its logical conclusion.

20. For the reasons afore stated but without expressing any views on merits, we are satisfied that the petitioner or his mother have failed to make out a case that the Designated Court ought to have summoned them through ordinary process. No case to interfere with the impugned order dated 21-7-2015 is made out.

21. Dismissed.

22. However, if the petitioner surrenders and thereafter applies for regular bail, the Designated Court is directed to consider the same in accordance with law and at the earliest without being influenced by the observations made herein above.