

(2011) 03 P&H CK 0811

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R.M. M-3990 of 2011 (O and M)

Awadesh Kumar Chaturvedi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: March 1, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 172
- Penal Code, 1860 (IPC) - Section 167(1), 172, 172B(1), 363, 366A
- Punjab and Haryana High Court Rules and Order - Rule 10, 13, 9

Citation: (2011) 3 RCR(Criminal) 91

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Judgement

Alok Singh, J.

Present petition is filed seeking regular bail in case FIR No. 446 dated 21.11.2010 under Sections 363/366-A/368 of the Indian Penal Code registered at Police Station Gurgaon Sadar, District Gurgaon.

2. Although, no affidavit has been filed in compliance of order dated 8.2.2011 passed by this Court, however, Investigating Officer, Inspector Sajjan Singh, is present in person along with case diary.

3. Petitioner is the brother-in-law of the main accused. The allegation against the petitioner is that he has given his car to the main accused Kuldeep Singh for the abduction of the minor girl.

4. Mr. Gaurav Dhir, learned Deputy Advocate General, Haryana, states that petitioner is in constant touch with the main accused, who has not been arrested so far. Petitioner is in judicial custody w.e.f. 4.1.2011.

5. Petitioner is in jail w.e.f. 4.1.2011. He has not played any active role in the kidnapping or inducement of Suman. The only allegation against him is that his car

was used by the main accused Kuldeep Singh.

6. The argument of Mr. Dhir that petitioner is still in constant touch with the accused cannot be believed because present petitioner is in jail w.e.f. 4.1.2011.

7. Considering totality of the circumstances, I direct that petitioner be released on bail to the satisfaction of C.J.M./Duty Magistrate.

8. Perusal of the case diary reveals that it contains loose papers. There is no pagination as required by Section 172(1-B) of the Code. From the perusal of case diary it is not clear as to whether copies of the entries of the case diary were ever forwarded to the Magistrate and Superintendent of Police as required by Section 167(1) of the Code and Rules 9, 10 and 13 of Volume 3, Chapter 11 Part A of The Orders & Rules of Punjab & Haryana High Court. Not only this, case diary does not bear signatures of Magistrate, who has granted remand to the accused on 4.1.2011, as required by Rule 10 of Chapter 11 Part A of The Rules & Orders of Punjab & Haryana High Court (Volume 3).

Rules 9, 10 and 13 are being reproduced as under :-

9. Police remands, - When it appears that the investigation by the Police cannot be completed within the period of twenty four hours and there are grounds for the believing that the accusation is well founded, the Police officer must forward the accused to the nearest Magistrate, and also transmit a copy of the entries relating to the case in the diary of the Police Station. The Magistrate before whom the accused is brought may, whether he has or has not jurisdiction, authorise the detention of the accused in such custody as he thinks fit for a period not exceeding fifteen days, If he has not jurisdiction in the case, and considers such further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction.

10. Procedure of Magistrates granting remand.

- A Magistrate authorising the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub- Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate.

The Magistrate shall sign and date every page of the case diaries or copies thereof in token of, his having seen them.

13. Police diary to be kept and sent up regularly. - Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to

the inspection of these diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.

9. It is thus clear at the time of seeking remand police officer shall forward accused and copies of the entries to the Magistrate. Magistrate shall sign the case diary or copies of the entries of the case diary at the time of granting remand in token of having seen them. Magistrate shall grant remand to the accused only after satisfying that investigation shall take some time to complete and accused is prima facie involved in the cognizable offence. Investigating Officer shall record his proceedings day by day as per Rule 13 and Section 172 of the Code. Case diary shall be in volume and paginated as required by Section 172(1-B) of the Code. Case diary shall be forwarded to the Superintendent of Police daily and learned Magistrate shall ensure that case diary is being forwarded on daily basis to the Superintendent of Police. Magistrate should not act as post office while granting remand. He has to pursue the entries in the case diary and if he is satisfied then only can order remand.

10. This Court with pain observes that almost in every case, case diary is not being maintained properly as per Section 172 Code of Criminal Procedure. nor Rules framed by this Court are being followed nor Magistrate is signing the case diary while passing the order of remand as per Rule 10 (supra). Chapter 11 Parts A and B of Volume 3 of The Rules & Orders of Punjab & Haryana High Court are to be strictly followed by the police and Magistrates to avoid any manipulation, fabrication and in the interest of complainant and accused party. Let this order be forwarded to DGPs Punjab, Haryana, I.G. Chandigarh and to all the Session Judges of the Sessions Divisions under this Court to ensure strict compliance of provisions of the Code as well as Rules framed by this Court, after obtaining approval from Hon"ble the Chief Justice.