

CRM-M-17450-2022

KUMAR VISHWAS V/S STATE OF PUNJAB AND ANOTHER

Present:- Mr. Randeep Rai, Sr. Advocate and
Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Ms. Rubina Virmani, Mr. Karan Pathak,
Advocates for the petitioner.

Mr. Puneet Bali, Sr. Advocate with
Mr. Prashant Manchanda, Advocate,
Mr. V.G. Jauhar, Sr. DAG, Punjab and
Mr. H.S. Multani, AAG, Punjab.

Mr. Vinod Ghai, Sr. Advocate with
Ms. Kanika Ahuja, Mr. Kirti Ahuja, and Mr. Edward Augustine Goerge and
Ms. Mahima Dogra, Advocates
for the complainant/respondent no.2.

FIR No.	Dated	Police Station	Sections
25	12.04.2022	Sadar Rupnagar, District Rupnagar	153, 153A, 505, 505(2), 116, 143, 147, 323, 341, 120B IPC and Section 125 of the Representation of Peoples Act, 1951 and 1988.

The petitioner, whose credentials as highlighted in the petition, depict himself as a founder member of the Aam Aadmi Party (AAP), a Hindi poet, an author, social critique, homiletic, satirist, propagandist of communal harmony across regions, castes, faiths, languages, and a propagator of peace and harmony across the globe, has come up before this court under section 482 of the Code of Criminal Procedure, 1973 (CrPC), seeking quashing of an FIR registered against him.

2. The gist of the grounds taken in the quashing petition is that the FIR is politically motivated and an act of vendetta due to hostile relations with the new party in power; false implication by misusing the State machinery, wreaking vengeance for his defiance, and gross abuse of power, with the investigator playing puppet in the hands of the people in power.

3. On April 27, 2022, when the matter was listed for the first time, the respondents had appeared; and on the issue of interim stay of proceedings, I had heard Id. counsel for the parties for a considerable time and had reserved the order. Thus, the order confines only to the arguments addressed for and against the interim prayer for the stay of further proceedings and stay of arrest.

4. On April 12, 2020, the second respondent gave a written complaint to the SHO, Police Station Sadar, Roopnagar, Punjab, against the petitioner for running a vicious campaign in collusion with the vested elements to abet the use of violence, to spread feelings of enmity, hatred, and ill will, and to disrupt peace and tranquility. The complainant also handed over to the investigator, the video clippings of interviews of the petitioner.

5. On Feb 16, 2022, the petitioner Kumar Vishwas gave a video interview during the course of Vidhan Sabha elections, leveling false imputations about involvement of the Chief Minister of Delhi, with certain nefarious and anti-social elements, with a view to provoke and abet violence against the workers and supporters of AAP. As per the complaint, the interview script is as follows: *"One day, he told me not to worry because either he would become Chief Minister of an independent State... On this, I (Kumar Vishwas) confronted him by saying this is separatism, the referendum of 2020 is coming, and the world is funding it, from ISI to the separatist groups... He said, so what, then, he would become Prime Minister of an Independent country. Look so much separatism is in this man's thoughts to form Government, and acquire power at whatever cost."*

6. The complaint alleges that as part of a notorious campaign, petitioner gave the provocative interview to use it as a tool and an opportunity during the elections. On April 17, 18, and 19, 2022, Kumar Vishwas gave more interviews, reiterating his previous interview of Feb 16, 2022, despite being aware that the separatist and anti-national elements would take full advantage of the allegations. The interviews became viral on the internet and widely circulated in media. The workers, volunteers, supporters, and leaders of AAP had to bear the brunt of people's wrath by exposing them to manhandling and harassment, and violence. Every passing day, anti-social elements in connivance with Kumar Vishwas, were spreading their campaign to manhandle members of AAP, and due to such misleads, the common people looked them down as separatists.

7. The complainant further stated that on 12-04-2022, around noon, when they got free after redressing the people's grievances, a group of 10-12 unknown persons restrained, waylaid, and tried to manhandle and assault them by pushing them into a corner. Those people appeared to be furious because of the AAP's victory in the Vidhan Sabha assembly elections and called them by the names like *"Khalistani, Gaddar,"* and raised slogans, *"Kejriwal; Mann ki Sarkar Hai Hai," "Khalistani Sarkar Hai Hai," "Punjab Khalistan Nahi Banega."* Somehow, the complainant and his associates were able to run away. After that, on the same day, the complainant handed over the complaint to the SHO at 7 P.M. Based on these allegations, the SHO registered the FIR captioned

above. Subsequently the statements of the complainant and other witnesses were recorded under section 161 CrPC.

8. On April 19, 2022, the investigator issued notices against the petitioner under section 41-A of the CrPC. Aggrieved by the registration of FIR and further directions to join the investigation, the petitioner has filed the instant petition for its quashing with prayer for a stay of proceedings during the pendency of the petition.

9. The main thrust of the Ld. counsel for the parties is for and against interim relief at this stage. Ld. counsel for the petitioner seeks a stay of proceedings as well as stay of arrest, and to the contrary, Ld. counsel for the respondents strenuously oppose the same and submit that instead of seeking a stay of arrest, the petitioner should avail his legal remedy under section 438 CrPC and apply for anticipatory bail. Both the parties have cited a catena of judgments, but most of them would be relevant at the time of the final hearing and not at this stage for considering an interim stay.

10. I have perused the photocopy of the police file and the status report handed over by the State. The police file reveals that on April 12, 2022, Narinder Singh made a written complaint against Kumar Vishwas and unknown persons, that had taken place around 12 noon, and by 7.30 P.M., SHO had registered the FIR captioned above. The police immediately swung into action, started the investigation, proceeded towards the crime spot, and recorded the spot map. The next day, the DySP also reached the spot and met Narinder Singh, the complainant, Shiv Kumar, Gaurav Kapur, Mohan, Ranvir Singh Rana, Akram, Bahadur Singh, and Parambir Singh. Narinder Singh handed over the newspaper reports to DySP, taken into possession vide a memo. The complainant Narinder Singh stated before the DySP that yesterday, on April 12, 2022, at 12 noon, 10-12 unknown persons stopped him, and those persons were highly agitated. They started raising slogans against the, by saying "*Khalistani Gaddar*," "*Kejriwal and Mann ki Sarkar haihai*," and "*Khalistani Sarkar haihai*," "*Panjab Khalistan Nahi Banega*," and raised a commotion in a loud voice. Later on, by means of his supplementary statement, Narinder Singh further added that when they confronted these persons, then they stated that in February 2022, they had heard interviews of Kumar Vishwas and Alka Lamba on news channels in which Kumar Vishwas had revealed his communication with Arvind Kejriwal in which he told that one day Kejriwal had told him not to worry because he would become Chief Minister of a State; and on this Kumar Vishwas told him that separatism and referendum of 2020 are going on, the entire world is funding it, right from ISI other separatist bodies are being created; on this Kejriwal told Kumar Vishwas that after making Panjab an independent country, he would become its Prime Minister. Alka Lamba also corroborated this interview. We tried to cool them down by saying that

their national convenors Sh. Arvind Kejriwal and Sh. Bhagwant Mann and rather no leader had said this. All of us have to work for the prosperity of Punjab, and Khalistan is not on their agenda. Those people showed them the newspaper reports and stated that they were backing out when the newspapers were full of such news items. However, those people stated that they do not trust them and are sparing them for the day; however, if they are seen in the vicinity in the future, it would not be good for them, and they shall not let them enter in any village. After that, they boarded their vehicles, then those people threw the newspaper cuttings, and a few of the clips fell inside the vehicles, which were also handed over to the DySP. With great difficulty, they were able to escape from the spot. Because of the interview given by Kumar Vishwas and Alka Lamba, the differences have cropped up in the sections of the society and has affected the peace and tranquility in Punjab. Because of the statements made by Kumar Vishwas and Alka Lamba, they were encircled, and the incident had taken place. Similar incidents occurred in Chamkaur Singh Vidhan Sabha constituency on 18/19 Feb 2022, and those persons had apprised the complainant about it.

11. The contentions on behalf of the State and the complainant is that the incidents that had taken place on Feb 18, Apr 3 & 12, are a consequence of and a chain reaction of the interview of the petitioner.

12. In paragraph 3 of the quashing petition, the petitioner Kumar Vishwas states as follows,

“3. That the brief background of the case is that the petitioner was one of the founder members of the AAP. He came into contact with Sh. Arvind Kejriwal in the year 2005 during the “India Against Corruption” movement led by Sh. Anna Hazare. Recently in an interview the petitioner has given certain conversation which has taken place between him and Sh. Arvind Kejriwal regarding his political aspirations and thereafter there are series of statements and counter statements between the petitioner and Sh. Arvind Kejriwal which has been reported in media. The crux of all the conversation which has taken place during 2017 Punjab assembly elections when allegedly the petitioner had objected Sh. Arvind Kejriwal from taking any support from the Punjab based fringe and separatists elements to win Punjab elections on the basis of the said support.”

13. Given the explicit stand of the petitioner, the prayer for an interim stay is being considered in this factual background.

14. In his interview, the petitioner had made the statements way back in mid-February, 2022. The complainant, via his supplementary statement had introduced so many untold facts and events, which were originally missing in the complaint made on April 12, 2022. The following statement was missing in the typed complaint,

"...when they confronted these persons, then they stated that in February 2022, they had heard interviews of Kumar Vishwas and Alka Lamba on news channels in which Kumar Vishwas had revealed his communication with Arvind Kejriwal in which he told that one day Kejriwal had told him not to worry because he would become Chief Minister of a State; and on this Kumar Vishwas told him that separatism and referendum of 2020 are going on, the entire world is funding it, right from ISI other separatist bodies are being created; on this Kejriwal told Kumar Vishwas that after making Panjab an independent country, he would become its Prime Minister. Alka Lamba also corroborated this interview. We tried to cool them down by saying that their national convenors Sh. Arvind Kejriwal and Sh. Bhagwant Mann and rather no leader had said this. All of us have to work for the prosperity of Punjab, and Khalistan is not on their agenda. Those people showed them the newspaper reports and stated that they were backing out when the newspapers were full of such news items. However, those people stated that they do not trust them and are sparing them for the day; however, if they are seen in the vicinity in the future, it would not be good for them, and they shall not let them enter in any village. After that, they boarded their vehicles, then those people threw the newspaper cuttings, and a few of the clips fell inside the vehicles, which were also handed over to the DySP. With great difficulty, they were able to escape from the spot. Because of the interview given by Kumar Vishwas and Alka Lamba, the differences have cropped up in the sections of the society and has affected the peace and tranquility in Punjab. Because of the statements made by Kumar Vishwas and Alka Lamba, they were encircled, and the incident had taken place. Similar incidents occurred in Chamkaur Singh Vidhan Sabha constituency on 18/19 Feb 2022, and those persons had apprised the complainant about it."

15. Regarding the proximity of the interviews of Kumar Vishwas and the incident of April 12, despite mentioning long history in the typed complaint, the complainant finally concludes by merely stating that a group of 10-12 unknown persons restrained, waylaid, and tried to manhandle and assault them by pushing them in a corner. Those people appeared to be furious because of the AAP's victory in the Vidhan Sabha assembly elections, and called them by the names like *Khalistani, Gaddar*, and raised slogans, '*Kejriwal; Mann ki Sarkar Hai Hai*', '*Khalistani Sarkar Hai Hai*,' '*Punjab Khalistan Nahi Banega*. In the earliest version, the complainant did not mention any statements made by this group of 10-12 people, regarding the petitioner's role in instigating them. A perusal of the complaint does not *prima facie* point out any nexus between the interviews of mid-February, 2022 and the incident of April 12. Any detailed discussions might prejudice the outcome of the final verdict; as such, this court refrains and restrains from expressing any more at this stage.

16. The penal provisions under which the petitioner stands arraigned are not *prima facie* made out against him. Given above, the submission that the FIR is politically motivated cannot be ruled out. Even if all the allegations made in the complaint and the prompt investigation, which has covered almost all aspects, are hypothetically believed as gospel truth, still *prima facie* the evidence collected does not disclose the commission of any cognizable offence qua the petitioner. The filing of the complaint by naming the

petitioner as the principal accused does not appear to have been done to seek action against the legal injury. Further the complainant has clubbed the incident which had occurred at a different place, under a different scenario, on a much earlier date, with the incident of April 12, 2022, at Panjola in District Roopnagar. The lack of proximity between the two and the fact that the petitioner was indisputably not one of the 10-12 unknown persons, who allegedly waylaid the complainant, cannot be ignored. A perusal of the complaint and the investigation do not point out that the interviews of the petitioner triggered the incidents of Chamkaur Sahib or of April 12, as a domino effect. The arraigning of petitioner by linking his interviews with the stray incident occurring after eight weeks, falls in the category of the exceptional cases where non-interference would result in a miscarriage of justice. Thus, it is a perfect case to disrupt and stay the continuation of the investigation and further proceedings.

17. In M/S Neeharika Infrastructure Pvt Ltd v. State of Maharashtra, 2021 SCC Online 315, a three-judge bench of Hon'ble Supreme Court holds,

[57] From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would

result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

[58] Whether the High Court would be justified in granting stay of further investigation pending the proceedings under Section 482 Cr.P.C. before it and in what circumstances the High Court would be justified is a further core question to be considered.

[59] Before passing an interim order of staying further investigation pending the quashing petition under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, the High Court has to apply the very parameters which are required to be considered while quashing the proceedings in exercise of powers under Section 482 Cr.P.C. in exercise of its inherent jurisdiction, referred to hereinabove.

[60] In a given case, there may be allegations of abuse of process of law by converting a civil dispute into a criminal dispute, only with a view to pressurise the accused. Similarly, in a given case the complaint itself on the face of it can be said to be barred by law. The allegations in the FIR/complaint may not at all disclose the commission of a cognizable offence. In such cases and in exceptional cases with circumspection, the High Court may stay the further investigation. However, at the same time, there may be genuine complaints/FIRs and the police/investigating agency

has a statutory obligation/right/duty to enquire into the cognizable offences. Therefore, a balance has to be struck between the rights of the genuine complainants and the FIRs disclosing commission of a cognizable offence and the statutory obligation/duty of the investigating agency to investigate into the cognizable offences on the one hand and those innocent persons against whom the criminal proceedings are initiated which may be in a given case abuse of process of law and the process. However, if the facts are hazy and the investigation has just begun, the High Court would be circumspect in exercising such powers and the High Court must permit the investigating agency to proceed further with the investigation in exercise of its statutory duty under the provisions of the Code. Even in such a case the High Court has to give/assign brief reasons why at this stage the further investigation is required to be stayed. The High Court must appreciate that speedy investigation is the requirement in the criminal administration of justice.

18. In A P Mahesh Cooperative Urban Bank Shareholders Welfare Association v. Ramesh Kumar Bung, (2021) 9 SCC 152, challenging an order passed by the High Court in two interlocutory applications granting stay of all further proceedings including the arrest of the respondents, the de facto complainant, had filed the Special Leave Petitions before Hon'ble Supreme Court. While upholding the stay, Hon'ble Supreme Court holds,

[20] Therefore, it was patently an election dispute which was sought to be converted to a criminal case. More often than not election disputes are fought on different turfs, such as polling booths, police stations and court rooms. Sometimes, persons who raise these disputes manage to camouflage their real motive by words clothed in high moral fiber and strong legal content. But unfortunately, the petitioner could not do it successfully in this case, as the election disputes came to the court first before the petitioner could fall back upon allegations of loan fraud. Fortunately, the High Court saw through the game. This is why the High Court in its impugned order, granted the extraordinary relief of stay of further proceedings including the arrest of Respondents 1 to 3 herein. The facts are so glaring and the background setting so shocking, that the High Court correctly found it to be a fit and proper case to grant interim reliefs to Respondents 1-3 herein.

[27] Therefore, we are of the considered view that the High Court was perfectly justified in granting interim protection to the Respondents 1 to 3 herein and in ensuring that the supremacy of the ballot is not sabotaged by the authority of the police. Hence the SLPs are dismissed..."

19. In the light of the judicial precedents, and the observations made above, it is a fit case for this court to prevent the abuse of the process of law because the allegations made in the complaint and the investigation carried out by associating the spot witnesses do not contain any material which even remotely links the incident of April 12 with the interviews of the petitioner. Since the investigator has already recorded statements of the spot witnesses, the stay of all further proceedings would not tantamount to stifling the investigation.

20. The observations made in this order are only to consider interim relief, and the parties shall refrain from referring to these at the time of the final hearing of this matter.

21. Given above, further proceedings *qua* the petitioner, including arrest of Kumar Vishwas shall remain stayed, subject to the upper time limit mandated by Hon'ble Supreme Court in Asian Resurfacing of Road Agency Pvt Ltd v. Central Bureau of Investigation, (2018) 16 SCC 299, (para 33).

List on July 04, 2022 for final hearing. The State to file reply within four weeks, the second respondent may also file its reply, if any. The petitioner may file rejoinder(s) if any, within two weeks.

May 02, 2022
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(ANOOP CHITKARA)
JUDGE



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