

103.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-28141-2017

Date of decision:03.08.2017.

JATTI

... Petitioner

versus

STATE OF HARYANA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Amit Jaiswal, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner-Jatti in case FIR No.220 dated 18.06.2017 under Section 20 of NDPS Act, registered at Police Station Ambala Cantt.

The aforesaid FIR was registered on the basis of secret information. As per FIR, the petitioner lives near the house of 'Paso' (Paso is mother-in-law of the petitioner, resident of Dheha Colony, Ambala Cantt.) in a separate house constructed by him and is involved in sale and purchase of ganja. He is selling ganja from his house and large quantity of ganja is lying at his house. On the aforesaid information, the ASI called Suresh Kumar Kaushik, HPS/DSP, Ambala Cantt., on his official phone number 9729990103 from his phone number 9467421747 requesting him to come at the spot. When the ASI

along with fellow policemen reached the house of Jatti, he was standing in front of his house, but on seeing the police party, he ran away. Meanwhile, Suresh Kumar Kaushik, HPS/DSP, Ambala Cantt. along with his staff also reached the spot. On the basis of notice under Section 42 of the NDPS Act, the DSP allowed the ASI to conduct personal search of all the fellow personnel. He directed the ASI to search the house of Jatti. On search, a plastic bag which was lying under the cot inside the room was found containing intoxicating substance i.e. ganja. On being weighed along with the bag, ganja was found to be of 12 kgs. On account of recovery of 12 kgs of ganja, an FIR was registered against the petitioner.

Learned counsel for the petitioner has argued that the provisions of Sections 42 and 100 Cr.P.C. have not been complied with. There was no reason for the police to arrest the petitioner and no independent witness was associated. He has relied upon judgments of this Court rendered in **Karnail Singh Versus State of Punjab-2003(4) R.C.R. (Criminal) 316** and **Shiv Kumar Versus State of Haryana-1998(1) R.C.R. (Criminal) 33** to contend that when search is conducted in a house at night time, the police officer is required to record reasons justifying his search at night time as required under Section 42(1) of NDPS Act, 1985. The recovery on receipt of secret information has not been informed to superior officer, therefore, it is non-compliance of Section 42(1) of the Act. Reliance has also been placed on the judgment of Hon'ble Supreme Court rendered in **State of Punjab**

Versus Balbir Singh-1994 (1) R.C.R. (Criminal) 736 to contend that under Section 42(1), only the authorized officer can search and arrest and if search or arrest is made by any other officer, who is not authorized, the same would be illegal. The search between sunset and sunrise is in violation of the Act.

I have heard learned counsel for the petitioner.

In the case in hand, the FIR was registered on the secret information and pursuant thereto, a police party raided the house of the petitioner. At the time when search was to be made, Suresh Kumar Kaushik, HPS/DSP was contacted on his office phone, who reached the spot. A notice under Section 42 of the NDPS Act was prepared. Thus, the search was conducted in the presence of a gazetted officer i.e. Deputy Superintendent of Police. The petitioner, while taking advantage of the situation, ran away on seeing the police party. On search, a plastic bag was found which was lying under cot of the room of the petitioner, which contained intoxicating substance i.e. 12 kgs of ganja. Therefore, the plea of the petitioner that he is not a resident of Dheha Colony, cannot be accepted at this stage. The judgments cited by learned counsel for the petitioner are not attracted under the peculiar facts and circumstances of the present case. In **Karnail Singh's case** (supra), the Investigating Officer had though received information a day earlier but he did not send the information to his superior officer and thus, did not comply with the provision of Section 42 of the NDPS Act, but in the case in hand, the ASI has contacted the DSP through

mobile and pursuant thereto, the DSP-Suresh Kumar Kaushik was present at the time of search. Similarly, the judgment in **Shiv Kumar's case** (supra) is also of no help to the petitioner's case as in that case, the search was conducted in the house at night time, but in the case in hand, the search was conducted while making compliance of Section 42 of the NDPS Act.

Thus, taking into consideration the nature of offence, this Court does not find any reason to admit the petitioner on anticipatory bail. Accordingly, the present petition stands dismissed.

(HARI PAL VERMA)
JUDGE

03.08.2017

sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.