

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

CRM-M No.2045 of 2021 (O&M)  
Date of Decision.07.04.2021

Pargat Singh @ Kala

...Petitioner

Vs

State of Haryana

...Respondent

**CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR**

Present: Mr. J.S. Bedi, Senior Advocate with  
Mr. S.S. Brar, Advocate  
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

-.-

**JAISHREE THAKUR J. (ORAL)**

**CRM No.8546 of 2021**

Prayer in the instant application is for amendment of the head note of the main petition to the extent that inadvertently, in the head note it has been mentioned first petition for grant of regular bail instead of second petition and further for placing on record the amended index.

For the reasons stated in the application, the same is allowed. The amended index is taken on record and the registry is directed to carry out amendment in the head note of the petition as prayed for by the petitioner.

**CRM No.8547 of 2021**

Application is allowed.

Annexures P-5 and P-6 are taken on record.

**Main Case**

This is a petition that has been filed for grant of regular bail in case FIR No.53 dated 10.03.2020 under Section 21 of the NDPS Act, 1985 registered at Police Station Ding, District Sirsa.

Mr. J.S. Bedi, learned senior counsel assisted by Mr. S.S. Brar, Advocate appearing for the petitioner *inter alia* would raise a question regarding non-compliance of Section 42(1) of the NDPS Act, apart from raising an argument that there was a total non-compliance of proviso to Section 42(1) of the NDPS Act. It is argued that the FIR, which was registered on 10.03.2020 at 23:34 hours talks of setting up a *naka bandi* to apprehend one Pargat Singh @ Kaka son of Raj Singh (petitioner herein) and his accomplice Ramandeep @ Sona Singh son of Jagbtar Singh, who were travelling in a vehicle bearing No.HR-94-8235 make Hyundai i-20 and were in possession of heroin which was brought from Delhi. It is further argued that as per Section 42(1) of the NDPS Act, the relevant information is to be sent to an immediate superior, which was not done in the instant case as information was sent by Sub Inspector of CIA Staff Sirsa to the SHO, Police Station Ding. It is also argued that to cover up the lacuna, another notice under Section 42 of the Act was sent by the same official to DSP, Allenabad. It is further argued that raid was conducted at 8 PM, which is past sunset and therefore, proviso to Section 42(1) of the NDPS Act would also be applicable in so far as the officer concerned was to record his reasons as to why search warrant and authorization could not be obtained. In support of his argument, he would rely on judgment rendered by the Hon'ble Supreme Court in **State of Rajasthan Vs. Chhagan Lal 2014 (4) RCR (Criminal) 559**. It is also argued that recovery of 500 grams of heroin from two persons has to be taken into account and conscious possession would be distributed equally.

Whereas learned counsel appearing on behalf of the respondent-State refutes the arguments as raised by the senior counsel

appearing for the petitioner by contending that there was compliance of Section 42 of the NDPS Act in so far as necessary information had been sent to the person concerned within the stipulated period of 72 hours, while further arguing that there has been compliance of the proviso as envisaged under Section 42 (1). He would also argue that 500 grams of heroin has to be considered as conscious possession of both the accused persons and to buttress his argument, would rely upon a judgment rendered by Full Bench of this Court in **Bhupinder Singh alias Bhinda Vs. State of Punjab 2005 (1) RCR (Criminal) 168**.

I have heard learned counsel for the parties. Keeping in view the fact that debatable questions have been raised and the challan has already been presented, this Court deems it appropriate to grant regular bail to the petitioner herein. The instant petition is allowed and the petitioner is directed to be released on regular bail on execution of adequate personal/surety bond of Rs.3 lakhs to the satisfaction of concerned trial Court/Duty Magistrate. However, any observation made herein shall not be construed to be an expression on merits of the case.

**(JAISHREE THAKUR)**  
**JUDGE**

**April 07, 2021**  
Pankaj\*

Whether speaking/reasoned      Yes/No

Whether reportable      Yes/No