

105+216 **CRM-36839-2021 in/and
CRM-M-21344-2021**

Jaswinder Singh @ Mota vs. State of Punjab

Present: Mr. Fariad Singh Virk, Advocate,
for the applicant-petitioner.

Mr. Rana Harjasdeep Singh., Punjab.

Case heard via video conferencing.

CRM-36839-2021

The date of hearing in the accompanying petition being today itself, this application has been rendered infructuous, it being one seeking advancement of the date of hearing.

Disposed of as such.

CRM-M-21344-2021

This petition has been filed under the provisions of Section 439 of the Cr.P.C., for grant of 'regular bail' to the petitioner in case FIR No. 90 dated 25.02.2021, registered at Police Station City, District Barnala, for the alleged commission of offences punishable under the provisions of Sections 20/21/22/29 of the NDPS Act, 1985.

Learned counsel for the petitioner relies upon an order passed by this court on 13.10.2021 in the case of a co/-accused of the petitioner, i.e. in the case of Veerpal Kaur (CRM-M-24012-2021), with the said order reading as follows:-

“Case heard via video conferencing.

*Vide this petition, the petitioner seeks the
concession of 'regular bail' under the provisions of*

Section 439 of the Cr.P.C., upon FIR no.90, dated 25.02.2021, having been registered at Police Station City Barnala, alleging therein the commission of offences punishable under Sections 21/22/29 of the NDPS Act, 1985.

On September 27, 2021 the following order had been passed in this case by this court:

“Case heard via video conference.

A reply having been filed to the petition by the SSP, Barnala, which is ordered to be taken on record. Mr. Ganeriwala submits that even without getting into any controversy over whether lady officials were actually present on the spot or were introduced later, there is still non-compliance of Section 42 of the NDPS Act, 1985, even as per the report annexed as Annexure R-1, with the said reply.

It is to be noticed that learned State counsel has submitted that Section 42 of the said Act would not apply where there is no body search conducted and consequently, there is no violation of Section 42 of the Act.

Adjourned to 13.10.2021, with learned counsel for the parties to address arguments on that issue.

To be shown in the urgent motion list.”

Today Mr. Ganeriwala points to Annexure R-1 annexed with the reply filed by the SSP, Barnala, dated 13.08.2021, to submit that even as per the report sent under Section 42(2) of the NDPS Act, 1985 (a copy of that report being Annexure R-1 itself), it was only sent by way of a ruqqa to the Police Station City Barnala, by Sub-Inspector Gurbachan Singh, with him further pointing to the fact that even as per the copy of the FIR

itself (copy Annexure P-1), the said ruqqa/report was received by Assistant Sub-Inspector Gurmail Singh, who very obviously is not a superior of Sub-Inspector Gurbachan Singh.

That being so, with Annexure R-1 annexed with the SSPs' reply itself showing it to be a report under Section 42(2) and it not having been sent to any officer senior by the apprehending officer, without making any further comment on the actual merits of the case, it being a question of liberty of a citizen in the context of the alleged commission of an offence punishable under an Act that provides very stringent punishment, with prima facie at least it seen that the basic requirement of Section 42(2) of the said Act of 1985 was not complied with, the petition is allowed and the petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial court.

It is made clear that if any believable evidence is brought to the notice of the competent court that in fact a report under Section 42(2) was sent to an officer superior to SI Gurbachan Singh, within 72 hours as postulated in the said provision the prosecution would take appropriate steps in that regard.

It is also to be noticed that learned State counsel has submitted that the aforesaid contention of learned counsel for the petitioner would be something that would need to be seen at the time of the trial.

I do not agree with that contention because as already noticed hereinabove, this court is dealing with the liberty of an individual in the context of an Act which provides for very stringent punishment; and consequently, as is well settled law, if the basic

safeguards provided in the said Act itself are not seen to be complied with, in my opinion that would be reason enough for this court to invoke jurisdiction in terms of Section 37(1)(b)(ii) of the Act of 1985, to admit the petitioner to bail, with all observations made hereinabove obviously being only in the context of a petition filed under the provisions of Section 439 of the Cr.P.C.”

That being so, with obviously this court having come to a conclusion (for the purpose of a petition filed under the provisions of Section 439 of the Cr.P.C.), that Section 42 (2) of the NDPS Act, 1985, was not complied with, and liberty having been granted to the State to avail of appropriate proceedings if it was found that actually it had been complied with, the petitioner in this petition cannot be denied the same concession, though obviously with the same rider as has been imposed in Veerpal Kaurs' case.

Hence, the petition is allowed with the petitioner ordered to be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial court.

November 23, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE