

204.

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

CRM-M-23685-2020

Date of Decision: 22.11.2021

(Heard through VC)

GURJANT SINGH

.... Petitioner

Versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vipul Jindal Advocate,
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

JAISHREE THAKUR.J (Oral)

This is a petition that has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner, pending trial, in case FIR No.26, dated 23.04.2019 registered under Sections 21, 29 of NDPS Act, 1985 at Police Station Special Task Force (STF), District SAS Nagar, Mohali.

Reply filed on behalf of the respondent-State is taken on record.

Learned counsel for the petitioner, while praying for grant of regular bail to the petitioner, would contend that there is an alleged recovery of 2 kgs 300 grams of heroin from the petitioner, who has in fact been falsely implicated in the said FIR. It is argued that there is non-compliance of Section 42 of the NDPS Act (for short, 'the Act') in so far as report was

not sent to a person who would be superior in rank. The information was sent by Inspector Harbans Singh to the officer incharge of the police station i.e. Inspector Harbhinder Kumar and that would not be the compliance of Section 42 (2) of the Act as Inspector Harbhinder Kumar would not be his "immediate official superior". It is also argued that as per the notification dated 26.05.2017, all Punjab State Crime Police Stations had been declared as Special Task Force Police Stations and, therefore, the petitioner who was arrested at Tarn Taran, ought to have been produced before the Police Station at Tarn Taran itself. However, he was produced before the Magistrate at Mohali after having been taken to various police stations i.e. at Mohali, Ludhiana and back to Mohali itself. It is also submitted that non-compliance of the strict mandatory provisions and his incarceration on this account, have caused him great prejudice

On the other hand, learned State counsel opposes the grant of regular bail by contending that there is compliance of Section 42 of the Act as information was sent, which is required to be sent within a period of 72 hours, to his immediate official superior. In the instant case, information was received by Inspector Harbhinder Kumar at the Police Station who was required to furnish the necessary information to the superior official within a period of 72 hours, which was done. As far as the requirement that the petitioner ought to have been produced before the nearest Magistrate, as envisaged under Section 52-A of the Act, and was not produced before the Magistrate at Tarn Taran, it is submitted that the petitioner herein was produced within a period of 24 hours before the Magistrate at Mohali and, therefore, no prejudice would be caused to him.

I have heard learned counsel for the parties and have perused the paper book and the reply filed.

As per the reply filed, it is submitted that ruqa was sent by Inspector Harbans Singh to the police station, but reading of the FIR would reflect that ruqa was sent to the police station at Mohali. Moreover, there is no mention in the reply as to at what time the information was sent to the superior official which would have substantially complied with Section 42(2) of NDPS Act. The investigation was completed at the spot i.e. at Tarn Taran and the police party reached Police Station Bhikiwind where the SHO present i.e. Inspector Ranjit Singh was informed about the recovery of heroin from the petitioner and the co-accused, and it is thereafter they left for Police Station Special Task Force, Mohali. The case property was deposited at the said police station but the accused petitioner herein was taken to Ludhiana and then brought back to Mohali and produced before the JMIC, Mohali. The argument that there is no compliance of Section 52-A and Section 42 of the Act would require consideration before the trial Court. The petitioner herein, who was driver of the vehicle from where alleged recovery of 2 kg 300 grams of heroin was effected, is in custody since 23.04.2019 and as such he has completed about 2 years and 7 months of actual custody and the trial is at initial stage as only 2 persons have been examined. It is also noted that the petitioner is not involved in any other matter. Therefore, considering all arguments as raised regarding non-compliance of Section 42 and Section 52-A of the Act as well as the additional factor that the petitioner has been in custody for a period of about

2 years and 7 months and only 2 witnesses out of cited 13 witnesses have been examined, he is ordered to be released on bail on heavy security.

Accordingly, the instant petition is allowed and the petitioner is directed to be released on regular bail on his execution of personal bond in the sum of Rs.10 lakhs with one surety of the like amount to the satisfaction of concerned trial Court/Duty Magistrate.

However, any observation made herein shall not be construed to be an expression of opinion on merits of the case.

(JAISHREE THAKUR)
JUDGE

22.11.2021

sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No