

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

CRM-M-33673-2020 (O&M)
Date of Decision:- 7.10.2021

Harmesh @ Sagar Jindal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. D.N. Ganeriwala, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

(proceedings conducted through video conferencing)

* * * * *

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No. 13 dated 12.1.2020 under Sections 22/25/29 of the NDPS Act, 1985 at Police Station Sadar Jagraon, District Ludhiana.
2. The FIR was lodged at the instance of ASI Tota Singh wherein it is alleged that on 12.1.2020 when he alongwith other police officials was present at village Akhara, he received a secret information to the effect that Harvinder Singh @ Kala, resident of Diwana, District Barnala indulged in sale of intoxicant tablets and that even on the given day, he was coming from Jagraon in a white coloured Maruti car bearing registration No. PB-10-AS-4731 for the purpose of supplying such intoxicant tablets. On receipt of said information a report in terms of Section 42 of the NDPS Act (hereinafter referred to as 'the Act') as well as a *ruqa* for the purpose of registration of

FIR was sent to the police station through Constable Barinderjit Singh and a request was made to send another investigating officer at the spot.

3. Pursuant to receipt of aforesaid information and the same having been conveyed to the police station, ASI Raghuvir Singh reached at the spot and barricades were laid. A short while thereafter, a car bearing registration No. PB-10-AS-4731 was noticed and was signalled to stop. The driver of the said vehicle disclosed his name as Harvinder Singh. ASI Raghuvir Singh apprised him about his legal right in terms of Section 50 of the Act but said Harvinder Singh reposed confidence in ASI Raghuvir Singh and consequently, his search and of the car was conducted which led to recovery of 2000 intoxicant tablets of 'Tramadol Hydrochloride' regarding which Harvinder Singh could not produce any bill, licence or permit.
4. It is further the case of prosecution that on 15.1.2020 during the course of interrogation of Harvinder Singh, he made a disclosure statement to the effect that the intoxicant tablets had been supplied to him by Harmesh C/o Nirmada S/o Ashok Kumar, resident of Balotara, Pachpadra, District Barhmor, Rajasthan, who is working in Sagar Pharmacy.
5. Pursuant to the aforesaid disclosure statement of Harvinder Singh, a warrant of arrest was got issued from the Court of SDJM, Jagraon and the police team headed by Inspector Kikkar Singh proceeded to Jodhpur (Rajasthan) to arrest Harmesh. After reaching Jodhpur on 5.2.2020, the police party went to police post situated on Station road, Police Station Udey Mandir, Jodhpur where ASI Subhash Chander, Incharge of Police post was present, who was apprised of the facts and was associated with the police party and alongwith

him a *nakabandi* was held and they were able to arrest Harmesh (petitioner) while he was driving a car. A search of the car led to recovery of the following contraband :-

(i) 75000 tablets of 'Alprazolam' packed in 125 boxes, which were recovered from a briefcase lying in the car.

(ii) Another 22800 tablets of 'Tramadol Hydrochloride', recovered from two bags lying in the boot (diggy) of the car.

6. It is further the case of prosecution that after effecting recovery from Harmesh, the police party again visited police Station Udey Mandir, Jodhpur and met the SHO and apprised him of the facts and got recorded a DDR and thereafter proceeded back to Jagraon and reached police Station Sadar Jagraon at 3 a.m. on 6.2.2020. On 6.2.2020 itself, ASI Ramji Dass, after collecting the case property from MHC, produced the accused and the case property before Shri Amrish Kumar, SDJM, Jagraon where an inventory was prepared after taking the samples. The samples were sent for chemical examination and as per the report of the Chemical Examiner, the recovered intoxicant tablets were found to contain 'Tramadol'.

7. The learned counsel for the petitioner, while pressing his case for grant of bail, has broadly raised the following submissions :-

(i) that the petitioner has been arrested on the basis of a disclosure statement which hardly carries any evidentiary value;

(ii) that the identity of the petitioner cannot be established inasmuch as the person nominated in the disclosure statement of co-accused Harvinder Singh is one Harmesh @ Narmada and infact even the arrest warrants (Annexure P-3) were issued in

the name of Harmesh @ Narmada, whereas the name of the petitioner is Sagar Jindal;

- (iii) that the petitioner has not been arrested by a competent/empowered officer as per Section 42 of the Act and that Inspector Kikkar Singh had no authorization to effect arrest of the petitioner in Rajasthan and that in Rajasthan, as per notification dated 16.10.1986 (Annexure P-5), it is only a police officer of the rank of Inspector/Sub-Inspector who is posted as SHO, who is empowered to exercise powers under Section 42 of the Act;
- (iv) that no gazetted officer was called at the spot;
- (v) that the petitioner not having been produced before the nearest Magistrate from where the recovery was effected amounts to violation of Section 55 of the Act and also the provisions of Section 166 Cr.P.C;
- (vi) that since no transit remand was taken by the police for the purpose of bringing the petitioner from Jodhpur (Rajasthan) to Jagraon (Punjab), the entire procedure is rendered illegal and the recovery is rendered questionable.

8. Opposing the petition, the learned State counsel has submitted that in the instant case, a warrant authorizing Inspector Kikkar Singh to effect arrest of the petitioner Harmesh Kumar C/o Nirmada S/o Ashok Kumar, resident of Balotara, Pachpadra, District Barhmor, Rajasthan had duly been issued by the Court of SDJM, Jagraon and the police party headed by Inspector Kikkar Singh had associated the local police before effecting arrest of the petitioner and even after effecting the arrest had duly reported the matter at the police station and had got DDR recorded. It has been submitted that after recording DDR at police station, the police party started the overnight return journey

and was able to return back to Jagraon at 3 a.m. on 6.2.2020 and produced the accused before the Magistrate concerned on the same day itself i.e. on 6.2.2020 and as such, no flaw can be found in the procedure undertaken by the police. The learned State counsel has further submitted that as per the notification No. S.O.33/C.A.61/85Ss 42 and 67/87 dated 3.9.1987 issued by Government of Punjab, any officer above the rank of ASI is duly competent and empowered to perform duties under Section 42 of the Act, and that since the search was effected pursuant to an FIR registered in State of Punjab, it is the rules and procedure as applicable in the State of Punjab which have to be followed and not the one as applicable in the State of Rajasthan, even though the accused may have been arrested from Rajasthan. The learned State counsel has submitted that since it is a case of recovery of 'commercial quantity' of contraband, no case for grant of bail is made out.

9. I have considered rival submissions addressed before this Court. Each of the six submissions, as noted above are being discussed individually :-

10. **Submission no (i) :**

It is no doubt correct that the petitioner is not named in the FIR and has been arrested pursuant to a disclosure statement made by co-accused Harvinder Singh who had been arrested at the spot and 2000 intoxicant tablets of 'Tramadol Hydrochloride' had been recovered. However, it is the specific case of prosecution that when the petitioner was arrested pursuant to the aforesaid disclosure statement, his search was effected at the spot where he was apprehended and huge quantity of contraband was recovered from the car in which he was travelling. As many as 75000 tablets of 'Alprazolam' and 22800 tablets of 'Tramadol Hydrochloride' were recovered. In these circumstances, when the petitioner himself was caught red-handed being in

possession of huge quantity of contraband, then the mere fact that he was nominated as an accused pursuant to a disclosure statement cannot help the petitioner in any manner inasmuch as the disclosure statement virtually stands substantiated from the factum of recovery of huge quantity of contraband from the petitioner. Thus, the contention of the learned counsel in this regard cannot be accepted.

11. **Submission no (ii) :**

Though, the learned counsel has submitted that there is some ambiguity as regards the identity of the petitioner inasmuch as the disclosure statement is stated to be against one Harmesh whereas the petitioner as per his identity documents (Annexure P-2) is named as Sagar Jindal. A perusal of the PAN Card and Aadhar Card annexed as Annexure P-2 does show that the name recorded in the said PAN Card is Sagar Jindal son of Ashok Jindal whereas in the arrest warrants, the name recorded therein is Harmesh Kumar @ Narmada son of Ashok Kumar. While this Court finds that there could be some variation in the name even though the parentage is stated to be same but it is a case where the petitioner was found in possession of contraband when his arrest was effected. Thus, variation in name, if any, would lose significance as it is the factum of recovery at the spot from the petitioner which defines the culpability of the petitioner (by whatever name, he may be referred to), more than just his name. As such, the contention raised in this regard on behalf of the petitioner cannot be accepted and is hereby repelled.

12. **Submission no (iii) :**

It has been vehemently argued on behalf of counsel for the petitioner that in the State of Rajasthan, it is only an officer of the rank of Inspector/Sub-Inspector, who is posted as SHO who is empowered to exercise powers in

terms of Section 42 of the Act and since the recovery in the instant case had been effected by a police party headed by Inspector Kikkar Singh, who is stated to be accompanied by one official of the Rajasthan police namely ASI Subhash Chander, Incharge of a Police post and since none of them can be said to be SHO, therefore, the entire recovery, having been effected in violation of notification dated 16.10.1986 issued by the Government of Rajasthan (Annexure P-5), virtually stands vitiated and cannot be taken into account. The learned counsel, in order to hammer forth his aforesaid submissions has placed reliance upon various judgments including 2017(3) Cri.L.R. (Raj.) 1581 Gopal Vs. State of Rajasthan, (2000) 8 SCC 590 Roy V.D. Vs. State of Kerala, Gurnam Singh Vs. State of Rajasthan [S.B. Criminal Misc. Bail Application 588 of 2013].

13. The aforesaid contention deserves to be rejected on the short ground that Section 42 of the Act deals with empowerment of officials of a certain rank who may by notification be authorised to effect arrest, search etc. “without warrant or authorisation”, whereas in the instant case, the petitioner has been arrested pursuant to issuance of a Non-Bailable-Warrant by the Court of SDJM, Jagraon. A copy of warrant has been annexed with the petition as Annexure P-3. The aforesaid contention can also be tested from another angle as follows. By virtue of notification no. S.O.33/C.A.61/85Ss 42 and 67/87 dated 3.9.1987, issued by Government of Punjab, any officer above the rank of ASI is duly competent and empowered to perform duties under Section 42 of the Act. In the instant case, the co-accused of the petitioner had been arrested from Jagraon (Punjab) while in possession of contraband and the FIR was lodged at Jagraon. It was pursuant to a disclosure statement made by co-accused during interrogation to the effect that petitioner was his

supplier that petitioner's name surfaced and he came to be arrested. Though, indeed it is from a different State i.e. Rajasthan from where the petitioner was arrested but the contention that Inspector Kikkar Singh, who is otherwise duly competent to exercise powers under Section 42 of the Act in the State of Punjab, by virtue of notification dated 3.9.1987 issued by Government of Punjab, would not be so competent in the State of Rajasthan to exercise his powers in respect of an FIR lodged in Punjab is rather misconceived. His competence to effect arrest has to be examined in context of the procedure applicable in State of Punjab where FIR was lodged and where he is to be tried and not in accordance with procedure applicable in State of Rajasthan. In case, any separate FIR had been lodged in the State of Rajasthan on account of the recovery effected in Rajasthan from the petitioner, needless to mention, the petitioner would have been tried in a Court of Rajasthan where certainly the contention raised on behalf of the petitioner could have carried weight inasmuch as the Court at Rajasthan would examine the entire procedure in accordance with the rules applicable there. However the recovery in the instant case is pursuant to FIR lodged in State of Punjab and said recovery can be said to be part of same racket of drug peddling wherein drugs were being procured in Punjab from Rajasthan. The judgments pressed into service by counsel for the petitioner are all such judgments where the FIRs had been lodged in the State of Rajasthan itself where the search had been conducted by some police officer who was found to be not duly empowered in accordance with the notification dated 16.10.1986. The said notification dated 16.10.1986, issued by State of Rajasthan, cannot be made applicable to the police officers of the State of Punjab while they exercise such powers in respect of an FIR lodged in the

State of Punjab. The aforesaid contention, as such, does not carry any weight and is repelled.

14. **Submission no (iv) :**

It is correct that no gazetted officer was called at the spot and the recovery was effected by a police party headed by Inspector Kikkar Singh but in the instant case, the recovery cannot be said to have been effected from the personal search of the petitioner but was effected from a briefcase and bags lying in the car. Hon'ble the Supreme Court, while discussing the scope of application of Section 50 of the Act, in State of Himachal Pradesh vs. Pawan Kumar (2005)4 SCC 350, held as follows:

“11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a hold all, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act.

12. An incriminating article can be kept concealed in the body or clothings or coverings in different manner or in the footwear. While making a search of such type of articles, which have been kept so concealed, it will certainly come within the ambit of the

word "search of person". One of the tests, which can be applied is, where in the process of search the human body comes into contact or shall have to be touched by the person carrying out the search, it will be search of a person. Some indication of this is provided by sub-section (4) of Section 50 of the Act, which provides that no female shall be searched by anyone excepting a female. The legislature has consciously made this provision as while conducting search of a female, her body may come in contact or may need to be touched and, therefore, it should be done only by a female. In the case of a bag, briefcase or any such article or container, etc., they would not normally move along with the body of the human being unless some extra or special effort is made. Either they have to be carried in hand or hung on the shoulder or back or placed on the head. They can be easily and in no time placed away from the body of the carrier. In order to make a search of such type of objects, the body of the carrier will not come in contact of the person conducting the search. Such objects cannot be said to be inextricably connected with the person, namely, the body of the human being. Inextricable means incapable of being disentangled or untied or forming a maze or tangle from which it is impossible to get free."

15. The judgment in Pawan Kumar's case (supra) has recently been followed by Hon'ble Supreme Court in (2020)10 SCC 740 Rajesh Dhiman vs. State of Himachal Pradesh. The relevant extract from Rajesh Dhiman's case reads as under:

"22. The appellants' claim that the High Court erred in not considering noncompliance with Section 50 of the NDPS Act at the stage of appeal, is also premised upon a mistaken understanding of the law. As held in State of Himachal Pradesh v. Pawan Kumar (2005) 4 SCC 350., the safeguards for search of a person would not extend to his bag or other article being carried by them. Given how the narcotics

have been discovered from a backpack, as per both the prosecution and defence versions, there arises no need to examine compliance with Section 50 of NDPS Act.”

16. In view of the position of law settled by Hon'ble the Supreme Court, there was certainly no need of calling any gazetted officer at the spot. The submission raised in this regard is sans merit and cannot be accepted.

17. **Submission no (v) :**

The learned counsel for the petitioner has vehemently argued that there is violation of Section 55 of the Act inasmuch as Inspector Kikkar Singh who had arrested the petitioner and had effected search was required to produce the articles seized before the local police station, which has not been done. It has also been submitted that there is violation of provisions of Section 166 Cr.P.C. as well.

18. This Court finds that in the instant case, Inspector Kikkar Singh, who was accompanied by ASI Subhash Chander of Rajasthan police, after effecting recovery went to the Police Station Udey Mandir and apprised the SHO of the facts and got the DDR recorded at the police station and thereafter proceeded back to Jagraon and undertook an overnight journey and reached Jagraon at 3 a.m. in the morning on 6.2.2020. The accused was produced before the local Magistrate on the same day itself. In these circumstances, it cannot be said that there is any violation of provisions of Section 55 of the Act.

19. In any case, the finer aspects regarding violation, if any, of Section 55 of the Act, is a matter to be considered in the light of all other evidence before the trial Court. Still further, Hon'ble Supreme Court in (2005)8 SCC 725

Babubhai Odhavji Patel vs. State of Gujarat, while relying upon Gurbax Singh vs State of Haryana (2001)3 SCC 28, has held that the provisions of Section 55 of the Act are directory and not mandatory. The provisions of Section 55 of the Act are meant only to reinforce the link evidence regarding safe custody of the case property and non-compliance *ipso facto* will not vitiate the trial or conviction in case there is other cogent and reliable link evidence about safe custody of the case property ruling out any tampering therewith. In other words, the non-compliance of Section 55 of the Act cannot be construed in each and every case to vitiate the trial and is a question to be examined in light of all the evidence on record.

20. As far as Section 166 Cr.P.C. is concerned, the same is as regards a different aspect wherein officer incharge of a police station or a police officer not below the rank of Sub-Inspector, who is making an investigation may require an officer incharge of another police station whether in the same or in a different district to cause search to be made in any place where the former officer might cause search to be made within the limits of his own station. However, the instant case is entirely different inasmuch as it is a case of search in a different state and which had been made pursuant to an arrest warrant having been issued by the Court itself. Thus, Section 166 Cr.P.C. has no application to the facts of the instant case. In view of the discussion made above, the contention made above by counsel for the petitioner does not carry any weight and is repelled.

21. **Submission no (vi) :**

The learned counsel for the petitioner has submitted that the arrest and production of the petitioner is defective inasmuch as after causing arrest of

the petitioner in Rajasthan, no transit remand was taken from any Court in Rajasthan for conveying and producing him before a Magistrate in Jagraon which is at a distance of about 600 kilometers away. The aforesaid submissions could have been accepted in case the accused had been produced before the Magistrate after more than 24 hours of his arrest. No doubt, the place of arrest of the petitioner in Jodhpur is at a distance of about 600 kilometers from Jagraon where he was taken and produced after his arrest but it is the case of the prosecution that after effecting his arrest on 5.2.2020 in Jodhpur, Inspector Kikkar Singh apprised the local SHO and immediately proceeded for his return journey which the police party undertook during the night itself and reached at Jagraon on the morning of 6.2.2020 at 3 a.m. and the accused was produced on the same day itself before the local Court i.e. SDJM, Jagraon. A journey of 600 kilometers would take approximately 10-12 hours in normal traffic. The highways in Rajasthan are fairly good and there is hardly any traffic during night time and as such, the overnight journey by the police could well have been undertaken in about 10-12 hours including stopover for any meal or for freshening up. Thus, in view of the said factual position when the journey was not spanning over several days, there was no requirement for any transit remand. The contention, being without merit, cannot be accepted.

22. The instant case is a case where recovery of a huge quantity of contraband which falls in the category of 'commercial quantity' was effected from the petitioner and as such, the fetters imposed by Section 37 of the Act would be attracted. Hon'ble Apex Court in a recent judgment i.e. (2020)12 SCC 122 State of Kerala vs. Rajesh Kumar has reiterated the legal position as regards the limitations imposed by Section 37 of the Act and has further held that a

liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question. The petition is found to be sans merit and is hereby dismissed.

7.10.2021
kamal

(Gurvinder Singh Gill)
Judge

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