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

(1)

CRM-M-3209-2022

Date of decision:25.04.2022

BUTA SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

(2)

CRM-M-3286-2022

GURSEWAK SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Prabhdeep Singh Bhandari, Advocate
for the petitioner (in both cases)

Mr. Amitoj Singh Dhaliwal, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

Both the bail petitions cast under Section 439 Cr.P.C., are being disposed of through a common order, as they arise from a common FIR.

2. In FIR No.101 of 29.06.2021, registered at Police Station Kot Ise Khan, District Moga, an offence constituted under Section 18 of NDPS Act, is embodied.

3. The incriminatory role, as becomes assigned to the present bail petitioner(s), is that co-petitioner-Buta Singh, was driving white colour Brezza car bearing No.PB-47F-0639, whereas, the petitioner in the second petition i.e. Gursewak Singh, rather was therein as an occupant along with him. A secret information became received by the police officials, that therein become(s)

carried contraband, hence the police officials, after recording the secret

information, proceeded at the crime site, and, recovered from the arm-rest on the front seat of the car, 5 kgs of opium.

4. Though, the weight of the above seizure, makes it fall within the ambit of commercial quantity thereof, therefore, the rigors of Section 37 of the NDPS Act are applicable thereons, and, *prima-facie* the bail petitioners do not become entitled to theirs becoming admitted to regular bail.

5. However, the learned counsel for the petitioners argues, with much vigor before this Court, that when the secret information was received with respect to the present bail petitioners carrying in the above car, rather the seized therefrom contraband, thereupon the mandate carried in Section 42 of the NDPS Act became attracted, and, also enjoined strict compliance thereto being meted imperatively qua the carried therein pre-emptory requirement. Since the afore became breached, thereupon he contends for relief. The relevant mandate thereof becomes extracted hereinafter.

“42. Power of entry, search, seizure and arrest without warrant or authorisation.- (1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such

offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under This Act or any rule or order made thereunder, such power shall be exercised by an officer now below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

6. Be that as it may admittedly, the apposite recovery, was made from inside the car, and, when it also became admittedly effected in the interregnum *inter-se* sunset, and, sunrise, rather hence it made it incumbent, upon the investigating officer concerned, to before proceeding to enter the above conveyance, to obtain search warrants or authorizations, from the learned Magistrate(s) concerned, and/or on his failure to do so, his separately recording reasons, in a separately prepared document, rather *in tandem*, with the second proviso to Section 42, inasmuch as, his making narrations therein, that in case immense time becomes consumed in his obtaining the search warrants/authorization concerned, thereupon there being every likelihood of affording an opportunity to the accused concerned, to conceal the crime property or to escape from the crime site. However, neither the inspector sought the apposite warrants or authorization from the competent authority, hence for validating the seizure, and, consequent recovery of contraband, as made from the conveyance concerned. Even the mandate carried in the apposite second proviso (*supra*), became not evidently complied, therefore, despite prior information being received by the police officials concerned, about the factum of, in the vehicle (*supra*), contraband being carried, thereupon when rather it became imperative, upon the inspector of the police party, to prior to his entering into the conveyance, for his validly making therefrom the relevant recovery, rather to obtain search valid warrants or authorizations, hence from the competent authority concerned, whereas, his evidently omitting to obtain them nor also as stated (*supra*), when even the mandate of the second proviso (*supra*),

remains evidently not complied. Therefore, when the mandate of Section 42 of the NDPS Act, is cast in mandatory terms, and, requires the strictest compliance being meted thereto, whereas, rather no compliance being meted thereto. Hence *prima-facie* at this stage, the pre-emptory provisions carried in Section 42 of the NDPS Act, when become not meted any compliance, therefore, makes the entire exercise(s) drawn at the relevant crime site to be vitiated.

7. In sequel, the instant petitions are allowed, and, the petitioners are ordered to be released from judicial custody. However, the granting of bail to the bail applicants-petitioners, in both the petitions, is subject to theirs furnishing personal, and, surety bonds in the sum of ₹ 1 lakh each, before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to theirs not tampering with prosecution evidence, and, theirs not influencing prosecution witnesses, and, besides also theirs appearing before the trial Court concerned, as and when directed to make their respective personal appearance unless validly exempted.

8. This order is only for the disposal of both the petitions, and, shall have no bearings on the merits of the case.

9. A copy of this order be sent to the Director General of Police, Punjab, to initiate appropriate action in accordance with law against the errant police officials concerned.

(SURESHWAR THAKUR)
JUDGE

25.04.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No