

**In The High Court for the States of Punjab and Haryana  
At Chandigarh**

CRM-M-23883-2021 (O&M)  
Date of Decision:- 31.3.2022

Vicky Singh .... Petitioner

Versus

State of Punjab and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Hitesh Verma, Advocate, for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab,  
assisted by ASI Pardeep Singh.

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**GURVINDER SINGH GILL, J. (Oral)**

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.90, dated 25.02.2021, registered at Police Station City Barnala, District Barnala, under Sections 21, 22 and 29 of NDPS Act.
2. The allegations, in nutshell, are that on 25.2.2021 when a police party headed by SI Gurbachan Singh was present near main gate of Bus Stand, Barnala in connection with patrolling and checking, then a secret information was received to the effect that Jaswinder Singh, Veerpal Kaur, Kirna, Amrik Singh and Gurmit Singh indulged in sale of intoxicants and that even on the given day they were present on the

rear side of Prem Pardhan Market, Barnala. Pursuant to receipt of said information the police swung into action and reached at the nominated place where three male persons and two ladies were seen. The two ladies were holding a white coloured polythene in their hand while one male was taking out strips from the said polythene bag and was handing over the same to another person. Upon noticing the police party, the said persons threw away the polythene bag and tried to run, but were apprehended by the police. Upon checking the plastic envelop/polythene bag 180 strips of intoxicant tablets of Alprazolam IP 0.5 mg with 10 tablets in each strip i.e. a total of 1800 tablets apart from drug money amounting to Rs.1.20 lakhs was recovered. The ladies disclosed their names as Veerpal Kaur and Kirna. The person who was taking out the strips from the polythene bag disclosed his name as Jaswinder Singh @ Mota. It is alleged that a plastic container was also recovered from the spot containing 'sulfa' weighing 120 grams.

3. It is further the case of prosecution that one of the accused namely Vicky (petitioner) disclosed during interrogation on the same day itself that he had kept concealed more Alprazolam tablets in his truck. Pursuant to the said disclosure statement the accused led to recovery of 1200 intoxicant tablets of Alprazolam and drug money amounting to Rs.30,000/- which were recovered from the truck. It is further the case of prosecution that during the course of investigation, co-accused Amrik Singh stated that one Gurmit Singh is also involved in drug trafficking alongwith them.

4. Learned counsel for the petitioner submits that he has falsely been implicated in the present case and that there is violation of Section 42 of NDPS Act inasmuch as the prior secret information was never conveyed to any superior officer before proceeding to look for the accused pursuant to the said secret information. Learned counsel has further submitted that in any case the petitioner deserves the concession on grounds of parity inasmuch as other 5 co-accused namely Jaswinder Singh, Veerpal Kaur, Kirna, Amrik Singh and Gurmit Singh, have already been granted bail by this Court. Learned counsel submits that since the petitioner is also identically situated and has been behind bars since the last more than 1 year and 1 month, he also deserves the concession of bail on the grounds of parity.
5. On the other hand, learned State counsel while opposing the petition has submitted that in the present case Section 42 of NDPS Act would not have any applicability inasmuch as it is a case where recovery was effected from a public place. Learned counsel has further submitted that the petitioner in any case cannot draw any advantage or benefit from the fact that co-accused had been granted bail inasmuch as it is a case where pursuant to the recovery initially effected at the spot, the petitioner had suffered a disclosure statement leading to another recovery of 1200 tablets of Alprazolam and also drug money amounting to Rs.30,000/- from his truck which stands duly registered in his name and that in these circumstances his complicity is clearly evident. Learned State counsel has however, informed that the petitioner has been behind bars for the last more

than 1 year and 1 month. It has been informed that although charges have been framed, but none out of the cited 15 PWs has been examined so far. Learned State counsel has also informed that the petitioner happens to be involved in one more case for offence punishable under the NDPS Act.

6. I have considered rival submissions addressed before this Court.
7. A co-ordinate Bench while granting bail to co-accused wherein also a contention in respect of non-compliance of Section 42 NDPS Act had been raised, observed as follows:

“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.”

8. It is not in dispute that all other co-accused have been granted bail by this Court. In view of the aforestated position and without commenting anything as regards the compliance or non-compliance of Section 42 of NDPS Act, but while mainly bearing in mind that all other co-accused have been granted bail by this court and the petitioner otherwise has been behind bars for a substantial period of 1 year and 1 month, the petition is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

**31.3.2022**

Mohan

**(GURVINDER SINGH GILL)**  
**JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No