

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

CRM-M-24030-2021 (O&M)
Date of Decision:- 25.5.2022

Amarjit Kaur @ Jiti

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. A.S.Brar, Advocate, for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab,
assisted by ASI Gurcharan Singh.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against her vide FIR No.56, dated 14.4.2021, Police Station City South Moga, District Moga, under Section 22 of NDPS Act.
2. The allegations, in nutshell are that the police received secret information on 14.4.2021 to the effect that Amarjit Kaur indulges in sale of intoxicant tablets and that even on the said day she was doing the same at her house and in case a raid is conducted she could be

apprehended with the intoxicant tablets. It is further the case of prosecution that pursuant to receipt of said information a raid was conducted and the petitioner was caught red-handed while in possession of 1100 tablets of Tramadol total weighing 447 grams.

3. Learned counsel for the petitioner submits that she has falsely been implicated in the present case and that the search and arrest as effected has been effected in violation of the provisions of Section 42 of NDPS Act inasmuch as the arrest was effected after sunset and that too without taking any warrants or authorisation and without recording any specific reason for not doing so.
4. On the other hand, learned State counsel has submitted that the petitioner is a habitual offender having been involved in 7 other cases including four cases under NDPS Act. Learned State counsel has further submitted that though as per the instructions received by him, no warrant were taken and neither any reasons were recorded in writing for not getting warrants issued before raiding the house of the petitioner upon receiving the secret information, but in case raid had not been conducted immediately, the petitioner would have escaped from the spot and her arrest would have been absolutely impossible.
5. I have considered rival submissions addressed before this Court.
6. Before proceeding further, it will be apposite to refer to provisions of Section 42 of the NDPS Act which for the sake of ready reference is reproduced hereunder:

“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) to 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 persons 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 not 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.]”

7. The aforesaid provisions leave no manner of doubt that in case an arrest is to be effected from a building after sunset, the same ought to be effected after obtaining a warrant and in case it is not practicable to obtain warrants, then reasons for not doing so need to be

specifically recorded. When this matter was taken up for hearing on 10.1.2022 the following order was passed:

“Learned State counsel requests for a short adjournment to file a short affidavit as regards the query raised by this Court on 23.09.2021; as to whether any search warrants were obtained before effecting search and if the same were not obtained, as to whether any reason for not obtaining the same was recorded in writing.

In view of the aforesaid request, the matter is adjourned to 22.03.2022.”

8. The State has filed its reply, but somehow the State has chosen not to address the aforesaid query as raised vide order dated 10.1.2022. The reply is absolutely silent as regards the said aspect. In any case the State counsel upon instructions from ASI Gurcharan has informed that neither warrants were obtained nor any reasoning was recorded in writing for not obtaining the warrants.
9. In view of the aforesaid position this Court certainly finds that the case apparently appears to be a case of non-compliance of provisions of Section 42 of NDPS Act as regards the arrest of the petitioner who was arrested from her house after sunset without any warrant and without recording any reasoning for not doing so.
10. Though, during the course of arguments, learned counsel has also submitted that as per reply, the petitioner was found to be standing at the gate carrying the contraband in a transparent polythene bag and which again makes recovery suspect as has been held in CRM-M-8026 of 2020 titled in Lakhwinder Singh @ Lakha Vs. State of

Punjab as well as in CRM-M-20019 of 2020 titled as Gurwinder Singh @ Binder Singh Vs. State of Punjab, but this Court need not go into the said aspect inasmuch as it is a case where violation of Section 42 NDPS Act is apparently there. The petitioner is stated to be behind bars since the last about 1 year and 1 month. As on date only 2 out of the cited 13 PWs have been examined. In these circumstances, when it is rendered doubtful as to whether the petitioner had indeed committed the offence in question or as to whether she had been arrested legally, further detention of the petitioner would not be justified. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to her furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

11. It is however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

25.5.2022
mohan

(GURVINDER SINGH GILL)
JUDGE

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