

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

**CRM-M No. 26248 of 2021 (O&M)
Date of Decision: 30.03.2022**

Sarabjit Kaur

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Parminder Singh Sekhon, Advocate,
for the petitioner.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab
assisted by ASI Ragvinder Dhir.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition under Section 439 Cr.P.C., seeks grant of regular bail in case FIR No. 99 of 15.12.2020, which was registered against him, at Police Station Badhni Kalan, District Moga, constituting therein an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The bail applicant-petitioner is stated to be suffering judicial incarceration since 15.12.2020.

3. The bail petitioner – Sarabjit Kaur is married to one Baljeet Singh. The police officials raided the house of Baljeet Singh, on 15.12.2020. In contemporaneity to the house of Baljeet Singh, becoming raided, the present petitioner was also available in the raided premises concerned. In pursuance to raid, being made, upon the premises concerned, the police officials made recoveries of 18 bags of poppy husk, wherein 20 kgs., each was kept or poppy husk, weighing 360 kgs., became recovered.

4. Though, the weight of the afore seizure makes it fall within the ambit of commercial quantity thereof, and, also hence, the rigour of Section

37 of the NDPS Act, are applicable thereon, hence constraining this Court to not admit to regular bail to the bail petitioner.

5. However, the learned counsel appearing for the petitioner had, on 16.07.2021, made a statement before this Court, that the raid of the relevant premises concerned, rather occurred in the interregnum since sunset and sunrise, thereupon, he contended that hence breach of the mandatory provisions, enjoining the makings of strict compliance thereto, hence embodied in Section 42 of the NDPS Act, has happened. His contention qua breach of the mandate carried in Section 42 of the NDPS Act, provisions whereof stand extracted hereinafter, becomes rested upon the factum that since the raiding of the premises concerned, was a sequel, to the police officials concerned, having prior information qua therein the incriminatory narcotic drugs and psychotropic substances being kept. Thereupon, a dire statutory necessity became cast upon the police officials concerned, to, before proceeding to at the afore time of the day concerned, enter into the premises concerned, rather obtain valid search warrants from the learned Magistrate concerned. He submits, that though in the absence of valid search warrants becoming obtained by the police official concerned, as a pre-condition, for theirs making a valid raid of the premises concerned, through theirs entering into the premises concerned, yet the police officials concerned, were required to be recording the reasons, with disclosure therein appertaining to, given the immensity of time being consumed, rather for obtaining the search warrants or authorisations, from the learned Magistrate concerned, thereupon there would be every possibility, and, also would purvey an opportunity to the accused concerned,

to, either flee from the crime site or for their concealing the incriminatory material concerned.

“ Section 42 in The Narcotic Drugs and Psychotropic Substances Act, 1985

1[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 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 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. For testing the vigour of the afore made contention, the learned State Counsel was directed to ensure that the relevant records, as, maintained by the Investigating Officer (IO) concerned, become produced, before this Court.

7. Today, the learned State Counsel, on instructions, meted to him, by ASI Ragvinder Dhir, submits that the prosecution case is rested, upon a prior information in respect of the premises concerned, either hiding or concealing therein, the narcotic drug or psychotropic substance(s). Therefore, an imperative or peremptory statutory duty became cast upon the IO concerned, especially, when it is also further candidly disclosed to this Court, by the learned State Counsel, that the relevant premises became raided in the interregnum, inter se, sunset, and, sunrise, to obtain search warrants or authorisations from the learned Magistrate concerned, whereupon the raid would become valid, and, also the recovered therefrom incriminatory substance, would be taint free. However, apparently neither

the afore apposite authorisation nor the search warrants became obtained by

the police officials concerned, from the learned Magistrate concerned.

8. Be that as it may, though it was yet open to the police officials concerned, to proceed to validly raid the premises concerned, but yet an imperative statutory duty became cast upon the police officials concerned, to yet record reasons in respect of the immensity of time being consumed, rather for the obtainings of the relevant authorizations or search warrants, from the learned Magistrate concerned, hence there being every likelihood of the accused fleeing from the crime site or thereupon an opportunity for facilitating them to conceal or hide the incriminatory narcotic drug or psychotropic substance(s), rather becoming afforded to them. However, even in respect of the above imperative statutory necessity, in exception to the necessity of search warrants, becoming obtained from the learned Magistrate concerned, rather the learned State Counsel submits, that the afore statutory duty has also remained uncomplied with, by the police officials concerned.

9. In consequence, the raid, as, made upon the premises concerned, and, also the recovery, if any, as became effected in pursuance thereof, is prima facie, at this stage, to be concluded to be vitiated, inasmuch as, its breaching the mandatory statutory provisions embodied in Section 42 of the NDPS Act, provisions whereof enjoin the meteings of strict compliances thereto.

10. Consequently, the instant petition is allowed, and, the petitioner-bail applicant is ordered to be released from judicial custody. However, the granting of bail to the bail applicant-petitioner, is subject to her furnishing personal and surety bonds in the sum of ₹ 50,000/- each,

before the learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned, and, also subject to her not tampering with prosecution evidence, and, her not influencing prosecution witnesses, and, besides also her appearing before the trial Court concerned, as and when directed to make her personal appearance, unless exempted for valid reasons.

11. However, in case the bail applicant-petitioner, abuses the facility of bail, granted to her by this Court, thereupon the Investigating Officer concerned shall make a motion before this Court, for cancelling the facility of bail, as is granted to the petitioner, through the order made today by this Court.

12. This Court deprecates the slipshod, and, shoddy investigation, made by the police officer(s) / official(s) concerned, into FIR (supra). Therefore, the respondent is directed to forthwith send a copy of this order to the DGP, Punjab, to enable him to draw appropriate action in accordance with law, against the police officer(s) / official(s) concerned.

13. Any observation made hereinabove is in respect of the disposal of the instant petition, and, shall not be taken to be any observation on the merits of the case, and, nor the learned trial Judge concerned, shall be influenced from the afore order, as and when the learned trial Judge concerned, enters upon the trial, against the accused.

14. The pending miscellaneous application, also, stand disposed of.

March 30, 2022

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>