

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

**CRM-M-29641-2021
Date of Decision: 21.04.2022**

Gurgajajeet Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

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CRM-M-9470-2021

Gurgajajeet Singh

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

**Present: Ms. Supriya Garg, Advocate,
for the petitioner.**

Mr. Rana Harjasdeep Singh, D.A.G., Punjab.

AMOL RATTAN SINGH, J. (ORAL)

CRM-M-29641-2021

This is the 3rd petition filed by the petitioner seeking to be admitted to bail under the provisions of Section 439 of the Cr.P.C., in the context of FIR No. 30, dated 29.04.2019, registered at Police Station Special Task Force, District SAS Nagar, Mohali, for the alleged commission of offences punishable under the provisions of Sections 21/25/29/61/85 of the NDPS Act, 1985.

The first petition filed by the petitioner, i.e. CRM-M-52226-

2019, was withdrawn without any arguments on merits recorded (that is seemingly because the Bench hearing the matter was not inclined to entertain the petition), on 11.02.2022.

Thereafter the 2nd petition, i.e. CRM-M-16674-2020, was filed by him, in which the following order was passed on 15.02.2021:-

“Case heard via video conferencing.

Learned counsel for the petitioner submits that unknowingly he has written that this is the first petition filed by the petitioner, whereas actually he had also filed another petition and consequently, he seeks to withdraw this petition to enable him to file another one giving the complete details of the previous case.

Dismissed as withdrawn.”

This 3rd petition having been filed on 28.07.2021, the following order was recorded by this court on that date:-

“Case heard via video conferencing.

Learned counsel for the petitioner submits firstly that the interim bail granted to the petitioner by the learned Special Judge, Amritsar, was discontinued on the ground that the High Power Committee constituted by this court had stated that only persons other than those who, as per the investigating agency, were found to be carrying commercial quantity of the contraband, would be admitted to bail in view of the ongoing pandemic (on medical grounds etc.); whereas the quantity alleged to have been recovered from the petitioner and his co-accused is 1.25 kgs (with commercial quantity starting from 250 grams and above).

She submits that the petitioner has again

been admitted to hospital (i.e. Amber Ekagar Heart & Multispeciality Hospital, Kabir Park, Kot Khalsa, Opposite University, Amritsar), with a fit of epilepsy; however no medical certificate to that effect has been annexed to the petition.

She next submits that in any case there is a violation of Section 50 of the NDPS Act because though it is stated in the report submitted under Section 173 Cr.P.C. that a gazetted officer by the name of Sh. Pawanjit Singh, DSP, came to the spot, the recovery memos are not shown to be signed by him even as per the said report.

Notice of motion.

Mr. Ramdeep Partap Singh, learned DAG, Punjab, accepts notice at the asking of the court on behalf of respondent-State.

A gazetted officer is directed to file a reply to the petition, specifically answering the aforesaid contention as regards non-signing of the recovery and personal search memos by the gazetted officer; and further, it is to be verified as to whether the petitioner has actually been admitted to the hospital or not (i.e. Amber Ekagar Heart & Multispeciality Hospital, Kabir Park, Kot Khalsa, Opposite University, Amritsar); and if so, since when.

Adjourned to 09.09.2021.”

Thereafter, on 09.09.2021, learned counsel for the petitioner had submitted that there is non-compliance of Section 50 of the NDPS Act, 1985, with a reply also having been filed on that date on behalf of the respondent-State.

On 07.10.2021, the following order had been passed:-

“Case heard by video conferencing.

The reply filed, by way of an affidavit of the Deputy Superintendent of Police, Special Task Force, Border Range, Amritsar, on behalf of the respondent-State, dated 03.09.2021, is ordered to be taken on record.

Learned counsel for the petitioner points to paragraph 4 thereof to submit that it has been admitted that the personal search memos were not signed by the gazetted officer stated to have been present at the spot (Pawanjeet, DSP, STF, Border Range, Amritsar).

She submits that therefore actually he cannot be stated to be actually present simply because it was stated so in the other memos; and his presence itself becomes doubtful and in violation of Section 50 of the NDPS Act, 1985; contrary to the procedure to be adopted by a gazetted officer upon reaching the spot in question in terms of Section 50 of the NDPS Act, 1985. However, upon query of this Court as to the procedure to be adopted as per the relevant rules under the said Act or under the Cr.P.C., she seeks time to address arguments. She also wishes to cite judgments of the Supreme Court in “S.K.Raju. @ Abdul Haque @ Jagga vs. The State of West Bengal”, decided on 05.09.2018 and “State of Rajasthan vs. Parmanand and another” decided on 28.02.2014.

Mr.Rana, learned State counsel, also seeks to cite the judgment in “Madan Lal and another vs. State of Himachal Pradesh”, 2003(4) RCR (Criminal) 100.

Adjourned to 26.11.2021.

A photocopy of the order be placed in the file of other connected case.”

Today, learned counsel for the petitioner refers to Rule 25.23 of the Punjab Police Rules 1934, which reads as follows:-

“25.23. Searches by police officers. - [(1)

The rules regarding searches by Police Officers are contained in sections 165 and 166 of the Code of Criminal Procedure, 1973. Notices of search under section 165, summons to persons to witness search under sub-section (4) of section 100 of the said Code and search lists under sub-section (5) of the said section 100 shall be prepared in property search and seizure Form appended to in chapter XXI. One carbon copy of the same shall be submitted for record to the District Crime Record Bureau of the concerned District Head Quarters.]

(2) An officer-in-charge of a police station receiving a requisition to search, under Section 166 of Criminal Procedure or other law applicable, shall comply without unnecessary delay and shall take all necessary precautions to ensure a successful search.

A police officer making such requisition may attend personally and assist in such search or may send one or more of his subordinates for that purpose.

(3) Gazetted officers supervising investigations and inspecting officers shall take disciplinary action against investigating officers who carry out searches under Section 165, Code of Criminal Procedure, without sufficient justification.”

She thereafter refers to the form annexed as Annexure 3 with Chapter XXI of the said Rules and specifically to the form pertaining to attachment of property (search and seizure form, dealing with the details of narcotics drugs recovered/seized), from which she points to the fact that

when a Magistrate or a gazetted officer is present at the spot, the said recovery memo is to be signed by such officer, which even as per paragraph 4 of the the affidavit filed by the DSP, Special Task Force, Border Range, Amritsar, was not so signed.

Whereas learned counsel for the State obviously cannot deny that; however, he submits that the petitioner having been granted parole on medical grounds he was to surrender thereafter within a specified period, which he has still not done; and therefore he has been declared to be a proclaimed offender, vide an order passed by the learned trial court on 14.03.2022, with a copy of the communication addressed by an official attached to the learned trial court, having been produced in court, such communication having been addressed to the officer incharge/Police Station, Special Task Force, Amritsar, on 16.03.2022.

The said communication is ordered to be taken on record.

In view of the above, this petition is dismissed.

However, no observation made by this court either in this order or any previous order, would be taken into consideration to determine the actual guilt or innocence of the petitioner, all such observations having been made only in the context of a petition filed under the provisions of Section 439 of the Cr.P.C.

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By this petition, the petitioner seeks quashing of the aforesaid FIR in question, as also all other subsequent proceedings arising therefrom.

Though the petition by which the petitioner seeks to be admitted to bail has been dismissed hereinabove, he having been declared to be a

proclaimed offender, however, in view of the contentions raised by learned counsel for the petitioner as recorded hereinabove in the context of that petition, as also recorded in view of arguments recorded earlier in that petition, notice of motion is issued.

On the asking of the court, Mr. Rana Harjasdeep Singh, D.A.G., Punjab, accepts notice on behalf of the respondent-State.

A copy of the petition be given to learned State counsel by counsel for the petitioner today itself.

Adjourned to 12.07.2022.

A detailed reply be filed to each paragraph of the petition by a gazetted officer.

A photocopy of this order be placed on the file of the other connected case.

April 21, 2022
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.