

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-35330-2022

Date of decision : 21.12.2022

Paramjit Singh @ Pamma

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. S.P.S. Khaira, Advocate
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Prayer is for grant of regular bail to the petitioner in FIR No.177 dated 27.10.2020, registered for the offences punishable under Sections 18/22 of NDPS Act at Police Station Khamanon, District Fatehgarh Sahib, District Punjab.

2. As per the case of prosecution, it was claimed that:-

“SHO PS Khamanon, Jai Hind. Today I ASI alongwith ASI Baljit Singh 337/FGS, ASI Daljit Singh 655/FGS and PHG Lakhvir Singh 02/FGS, while riding on government vehicle Mahindra Bolero bearing No. PB-65D-9904 whose driver is HC Duryodhan Singh 685/FGS, in connection with checking of suspicious vehicles and for searching of bad persons were present at Chandigarh-Ludhiana road at village Manpur near Gurudwara Sahib village Manpur for picketing, at about 06:00 pm, secret informant came present and gave secret information to me in privacy that Satinderpal Singh @ Sonu son of Raghbir Singh resident of village Sanghol and Paramjit Singh @ Pamma son of Nirbhat Singh resident of

Bathan Khurd PS Kheri Naudh Singh District PGS are doing the business of supplying the intoxicant medicines and opium. Today also while riding on their Alto car color white bearing No. PB23Q7484, they will come from Chandigarh side alongwith intoxicant medicines and opium to Sanghol side via main road. If picket is laid at appropriate place and checking of the vehicles from Chandigarh side is done then above said Satinderpal Singh and Paramjit Singh can be apprehended with large quantity of intoxicant medicines and opium. The information is true and reliable. So above said Satinderpal Singh and Paramjit Singh by doing so, fulfills the ingredients of section 22/61/85 and 18/61/85 NDPS Act. So the Ruqa against them after writing for registration of FIR for the said offences against above said accused Satinderpal Singh @ Sonu and Paramjit Singh @ Pamma is being sent to PS through ASI Baljit Singh 337/FGS. FIR be registered and number of FIR be intimated. Special reports be issued to the higher officials and area Magistrate. Control room be informed. Another competent investigating officer be sent to the spot for further investigation of the present case. I, ASI alongwith fellow officials am busy in picketing at the spot. Gurmeet Kumar 36/FGS I/C Anti Narcotic Cell District Fatehgarh Sahib dated 27.10.2020. At place:- Main highway village Manpur at 06:45 pm. After receiving the Ruqa, the above said FIR against Satinderpal Singh @ Sonu son of Raghbir Singh resident of village Sanghol and Paramjit Singh @ Pamma son of Nirbhai Singh resident of Bathan Khurd PS Kheri Naudh Singh District FGS was registered. The documentation was completed. The Copies of FIR and special reports are being sent in the

service of area Magistrate and higher officials through arrived C Bhupinder Singh 359/FGB. Incharge Control room is being informed through e-mail. The original ruqa alongwith file of the case handed over to SI Shawinder Singh 15/JPCT and is departed alongwith arrived ASI Baljit Singh 337/FGS, ASI Piara Singh 152/FGS, SC Gurdhian Singh 934/FGS to the spot.”

3. Counsel for the petitioner argues that the vehicle was apprehended at around 6.45 p.m. Thus, the search of the vehicle would be hit by second proviso appended to Section 42(1). Reliance is being placed upon '*State of Rajasthan vs. Jag Raj Singh @ Hansa 2016 AIR Supreme Court 3041*', wherein the Apex Court held as under:-

“14. Another aspect of non-compliance of [Section 42\(1\)](#) proviso, which has been found by the High Court needs to be adverted. [Section 42](#) (1) indicates that any authorised officer can carry out search between sun rise and sun set without warrant or authorisation. The scheme indicates that in event the search has to be made between sun set and sun rise, the warrant would be necessary unless officer has reasons to believe that a search warrant or authorisation cannot be obtained without affording the opportunity for escape of offender which grounds of his belief has to be recorded. In the present case, there is no case that any ground for belief as contemplated by proviso to sub-section (1) of [Section 42](#) or Sub-section (2) of [Section 42](#) was ever recorded by Station House Officer who proceeded to carry on search. Station House Officer has appeared as PD-11 and in his statement also he has not come with any case that as required by the proviso to Sub-section (1), he recorded his grounds of belief anywhere. The High

Court after considering the entire evidence has made following observations :

“Shishupal Singh PD-11 by whom search has been conducted, on reaching at the place of occurrence by him no reasons to believe have been recorded before conducting the search of jeep bearing HR 24 4057 under [Section 42\(1\)](#), nor any reasons in regard to not obtaining the search warrant have been recorded. He has also not stated any such facts in his statements that he has conducted any proceedings in regard to compliance of proviso of [Section 42\(1\)](#). Since reasons to believe have not been recorded, therefore, under [Section 42\(2\)](#) it is not found on record that copy thereof has been sent to the senior officials. Shishupal Singh could be the best witness in this regard, who has not stated any fact in his statement regarding compliance of proviso to [Section 42\(1\)](#) and [Section 42\(2\)](#), sending of copy of reasons to believe recorded by him to his senior officials.”

4. I have heard counsel for the petitioner and have gone through the records of the case.

5. As per the case of the prosecution, the petitioner alongwith Satinderpal Singh @ Sonu were informed to be in possession of Narcotic Drugs/psychotropic substance and admittedly while they were apprehended, they were travelling in the car on a public road. The question that arises for the consideration of this Court will be as to whether in these circumstances, provision as contained in section 42 will be attracted to say that the vehicle could have been searched only in the time from sunrise to sunset and in case search was to be conducted after

sunset, compliance was required to be made as provided under Section 42(1) proviso 2. Chapter V deals with the procedure. Sections 42, 43 and 49 are being reproduced here below which are necessary for the adjudication of the question in hand:-

“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.]
- 43. Power of seizure and arrest in public place.** Any officer of any of the departments mentioned in section 42 may

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has any narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company. Explanation. For the purposes of this section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to, the public.]

49. Power to stop and search conveyance. Any officer authorised under section 42, may, if he has reason to suspect that any animal or conveyance is, or is about to be, used for the transport of any narcotic drug or psychotropic substance 1[or controlled substance], in respect of which he suspects that any provision of this Act has been, or is being, or is about to be, contravened at any time, stop such animal or

conveyance, or, in the case of an aircraft, compel it to land and

- (a) rummage and search the conveyance or part thereof;
- (b) examine and search any goods on the animal or in the conveyance;
- (c) if it becomes necessary to stop the animal or the conveyance, he may use all lawful means for stopping it, and where such means fail, the animal or the conveyance may be fired upon.”

6. Admittedly, the secret information was w.r.t. the petitioner being in personal possession of the contraband. After the contraband recovered from their possession, the concerned officer on the basis of suspicion conducted search of the vehicle as well in which they were travelling. Resultantly, at this stage, the search of the vehicle would not be governed by provision of Section 42, but by the provision of Section 49. Apart from that Division Bench of this Court in **Criminal Appeal No.D-1097-2009** titled as '**Ankit Kumar vs. State of Punjab**' has further held that where a vehicle is apprehended at a public place, Section 42 will not be attracted, it will be only Section 43. Resultantly, the first submission raised by the counsel representing the petitioner is answered against the petitioner.

7. Coming on to the second limb of arguments raised by counsel for the petitioner w.r.t. violation of Section 50, it is admitted case that the petitioner opted to be searched in the presence of the Gazetted Officer and was searched in presence of the Gazetted Officer. Thus, merely to say that Section 50 has been violated for the reason while giving options, the concerned officer told the petitioner that he can get himself searched from

the officer or the Gazetted Officer or the Magistrate has become inconsequential in the present case. There being a substantial compliance of Section 50, no prejudice can be said to have been caused to the present case.

8. At this stage, counsel for the petitioner submits that he has another arrow in his bow, as the batch numbers were not mentioned while drawing samples and thus, the FSL report cannot be looked into to nail the petitioner. This Court is of the considered opinion that whole of the concept of drawing samples is based on the concept of homogeneity. It is not the case of the petitioner that the sample drawn were heterogeneous and were thus consciously lifted to draw sample. Once the contraband recovered is homogeneous and the sample drawn is picked at random merely for the reason that batch number has not been mentioned, it will not affect the report of the forensic lab and cannot have an effect of rendering it inconsequential vis-a-vis bulk property. Once the samples and the bulk property are homogenous and the sample has delivered a result, the same shall be applicable to the rest of the case property as well.

9. Keeping in view the large incarceration already suffered by the petitioner, trial Court is directed to expedite the trial to conclude the same preferably within 03 months from the date of receipt of certified copy of this order.

10. Disposed off.

11. Needless to say nothing recorded herein shall be construed to be an expression of an opinion on the merits of the case.

(PANKAJ JAIN)
JUDGE

21.12.2022

Dinesh

Whether speaking/reasoned
Whether Reportable :

Yes
No