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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRM-M-6413-2024 (O&M)

Date of decision : 07.03.2024

Gurcharan Singh @ Chann

..... Petitioner

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. Mohit Kapoor, Sr. DAG, Punjab.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 439 Cr.P.C. for grant of regular bail to the petitioner in case bearing FIR No.42 dated 26.07.2023, registered for the offences punishable under Sections 21 and 22 of NDPS Act, 1985 at Police Station Fatehgarh Panjtoor, District Moga.
2. As per the case of the prosecution, a secret information was received by one ASI Nachhattar Singh with respect to the petitioner indulging in narcotic trade. Petitioner was apprehended with 10 grams of heroin and 40 tables of Etizolam.
3. Custody certificate has been produced. As per the same, the petitioner has undergone actual custody of 07 months and 12 days. The petitioner is behind bars since 26.07.2023 and has another FIR No.49/2022 dated 16.11.2022, registered under NDPS Act relating to recovery of 05 grams of heroin from the petitioner.

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4. Counsel for the petitioner submits that the false implication of the petitioner is evident from the Court below as per their report under Section 42 dated 26.07.2023 prepared and signed by ASI Nachhattar Singh regarding recording of secret information, it is a typed report. He submits that from the report, it is evident that ASI Nachhattar Singh claims to be travelling in a private vehicle. Thus, the question arises as to how the report was got typed, he further refers to Annexure P-4 i.e. the memo of arrest of the petitioner to submit that as per the contents thereof, wife of the petitioner was informed through whatsapp, yet the memo bears her signatures. It has been contended by him that in fact that petitioner has been apprehended from his residence and all these documents were prepared in the Police Station itself to falsely implicate the petitioner.

5. *Per contra*, State counsel submits that ASI Nachhattar Singh has already reduced the secret information into writing. He being not competent, a competent officer was sent on the spot and so far as report under Section 42 is concerned, the same was got typed from a shop near the spot. He further submits that arrest memo was signed by wife of the petitioner after she reached the spot as the petitioner was apprehended just about 5 meters from his place of residence. On being asked as to where the factum of report having been typed from the shop near the occurrence has been recorded in the police report or in the zimmies, State counsel fairly admits that there is no such recording of the said incident.

6. Compliance of Section 42 is mandatory as held by Supreme Court in *Karnail Singh vs. State of Haryana, 2009(5) RCR (Criminal)*

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515 to hold as under :-

“17. In conclusion, what is to be noticed is Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Section 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows :

(a) The officer on receiving the information (of the nature referred to in Sub-section (1) of section 42) from any person had to record it in writing in the concerned Register and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of section 42(1) and thereafter, as soon as it is practical, record the information in writing and forthwith inform the same to the official superior .

(c) In other words, the compliance with the requirements of Sections 42 (1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance of requirements of sub-sections (1) and (2) of section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in

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writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of [section 42](#). But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of [section 42](#) of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of [section 42](#) of the Act. Whether there is adequate or substantial compliance with [section 42](#) or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to [section 42](#) by Act 9 of 2001.”

Compliance thereof in this case is debatable and is matter of trial.

7. In view of above, the present petition is allowed. Petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned. However, in addition to conditions that may be imposed by the Trial Court/Duty Magistrate concerned, the petitioner shall remain bound by the following conditions :-

- (i) The petitioner shall not mis-use the liberty granted.
- (ii) The petitioner shall not tamper with any evidence oral or documentary during the trial.
- (iii) The petitioner shall not absent himself on any date before the trial.
- (iv) The petitioner shall not commit any offence while on bail.
- (v) The petitioner shall deposit his passport, if any with the trial Court.
- (vi) The petitioner shall give his cellphone number to the police authorities and shall not change his cell-phone number without permission of the trial Court.

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(vii) The petitioner shall not in any manner try to delay the trial.

8. In case of breach of any of the aforesaid conditions and those which may be imposed by the Trial Court, the prosecution shall be at liberty to move cancellation of bail of the petitioner.

9. Ordered accordingly.

10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands 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

07.03.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No