



S. No.216

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

**CRM-M-11497 of 2024
Date of Decision:16.07.2024**

Priyanka

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Kawalpreet Singh Virk, Advocate
for the petitioner.

Mr. Rajbir Singh, DAG, Haryana.

DEEPAK GUPTA, J. (Oral)

In compliance of the order dated 30.04.2024, supplementary status report by way of affidavit dated 08.07.2024 of Shri Vipin Kumar Ahlawat, HPS, Assistant Commissioner of Police, Manesar, Gurugram, Haryana has been placed on record. Copy already supplied.

2. By way of this petition filed under Section 439 Cr.P.C., petitioner prays for grant of regular bail in case FIR No.14 dated 23.01.2023 registered under Section 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Manesar, District Gurugram.

3. This is the second petition for this purpose. Earlier petition bearing CRM-M-40488 of 2023 filed by the petitioner was dismissed as withdrawn vide order dated 23.08.2023.

4. As per the prosecution allegations, on the basis of secret information, to the effect that the petitioner and her husband were involved in illegal business

of selling ganja from their rented accommodation, raid was conducted on 23.01.2023 and 70 Kg. of ganja was recovered from their possession, kept in four plastic bags after making necessary statutory compliances.

5. The contention raised by learned counsel for the petitioner is that despite allegedly receiving the secret information, no compliance of Section 42 of the NDPS Act was made; that the petitioner has been roped in only because of the presence of the contraband at the rented accommodation, though she was not aware about the concealment of any such contraband. Learned counsel further contends that the petitioner is in custody for the last more than one year & six months and that only one witness has been examined so far out of 20. Learned counsel also contends that the petitioner is the first offender and a woman and so, in all the circumstances, she be allowed bail.

6. Opposing the bail petition, learned State Counsel contends that huge quantity of contraband falling in the commercial category has been recovered from the accommodation taken on rent by the petitioner and her husband. Learned counsel also contends that compliance of Section 42 of the NDPS Act was duly made as intimation to Shri Tek Chand, Assistant Professor, Government College, Manesar was sent, who had been appointed for this purpose vide letter dated 28.12.2022 of the Deputy Commissioner, Gurgaon. However, learned State Counsel does not dispute the fact that out of 20 witnesses cited by the prosecution, only one has been examined so far. Learned State Counsel has also placed on record the custody certificate revealing that the petitioner is in custody for the last 01 year 05 months and 22 days and that she has no criminal antecedents.

7. Submissions considered.

8. Relevant parts of Sections 41 and 42 of the NDPS Act read as under:-

“41. Power to issue warrant and authorisation. – (1)

(1)xxxxxxxxxxxx

(2) Any such officer of gazetted rank of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including the paramilitary forces or the armed **forces as is empowered in this behalf by general or special order by the Central Government**, or any such officer 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 personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or that any narcotic drug or psychotropic substance or controlled substance in respect of which any offence 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 place, may authorise any officer subordinate to him but superior in rank to a peon, sepoy or a constable to arrest such a person or search a building, conveyance or place whether by day or by night or himself, arrest such person or search a building, conveyance or place.

(3) xxxxxxxxxxxx

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 paramilitary 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.”

9. It is clear on perusal of the afore-said provisions that powers of entry search etc. may be exercised, by the empowered officer, who may be of Revenue, Drugs Control, Excise, Police or any other Department of the Central or the State Government, as the case may be but he must be empowered in this behalf by general or special order of the Central or State Government, as the case may be.

10. In present case, learned counsel for the petitioner has rightly drawn attention towards a gazette notification dated 29.12.1986 (Annexure P2) issued by the Haryana Government, Excise and Taxation Department, whereby the Governor of Haryana had empowered the Officers of and above the rank of Excise Inspector in the Excise and Taxation Department and above the rank of Naib Tehsildar in the Revenue Department and above the rank of Assistant Sub Inspector in the Police Department to exercise the powers and perform the duties specified in Section 42 of the NDPS Act within the area of their respective jurisdiction. Emphasis of learned counsel is that said notification was issued on the basis of orders passed by the Governor of Haryana. However, in the present case, Assistant Professor of Govt. College, to whom the intimation was sent under Section 42 of the NDPS Act, is not the officer empowered by the State Government. Learned counsel is right in contending that the authorisation to said Assistant Professor by the Deputy Commissioner, Gurugram is not empowered by the State Government, as referred in Sections 41 and 42 of the NDPS Act and thus, there is prima facie non-compliance Section 42 of the Act.

11. Apart from above, petitioner is in custody for the last 01 year 05 months and 22 days. She is the woman and a first offender. Out of 20 witnesses cited by the prosecution, only one has been examined till date and thus, trial is likely to take long time. Having regard to the long incarceration of the petitioner in custody, the rigors of Section 37 of the NDPS Act are required to be balanced with Article 21 of the Constitution of India providing for fundamental right to life and liberty, as the right to speedy trial is facet to Article 21.

12. Having noticed all the afore-said facts and circumstances, but without commenting anything further on the merits of the case, the present petition is

allowed. Petitioner is admitted to bail on her furnishing bail bonds and surety bonds to the satisfaction of learned trial Court/ Duty Magistrate concerned, on usual terms and conditions.

July 16, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No