

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

CRM-M-25276-2021
Reserved on: 04.08.2022
Date of decision: 10.08.2022

NAVJOT SINGH @ JOTA ...Petitioner

Versus

STATE OF PUNJAB ...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. V.K. Jindal, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J.

1. Through the instant petition cast, under Section 439 of Cr.P.C., the bail petitioner craves for indulgence of becoming admitted to regular bail in respect of FIR No.142 of 28.10.2020, registered at Police Station STF District STF Wing, wherein, offences constituted under Sections 21, 25, 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to "the Act"), are embodied.

2. In pursuance to a secret information, the police party arrived, at the crime site, and, there crime car Brezza No.PB-02-BD-7666, colour white arrived, and was stopped outside S.K. Dhaba, and, occupants thereof, upon being questioned, hence the person sitting on the driver's seat revealed his name, and, address, as Navjot Singh @ Jota son of Gurmej Singh resident of village Fattubhilla, P.S. Kathunangal, District Amritsar, whereas, the person sitting on the conductor's seat, revealed his name, and, address as Galwinder Singh @ Sarpanch son of Baldev Singh, resident of Village Fattubhilla, P.S. Kathunangal,

District Amritsar, and, the young person sitting on the backside, revealed his name, and, address as Randeep Singh @ Deepu son of Kabal Singh, resident of vilalge Fattubhilla, P.S. Kathunangal, District Amritsar. At the crime site the investigating officer concerned, revealed to them that, he has suspicion that, contraband is concealed in the crime car, and, also apprised them that, they have a legal right to cause their personal search, and, also the search of the car from any authorized officer or any Magistrate. The above intimation resulted in the accused apprising the investigating officer that, an intimation be given to a Gazetted Officer, to visit the crime site, for the relevant purpose. Consequently, the investigating officer concerned, from the crime site, made a cell phone call to Varinder Kumar PPS, DSP, and, apprised him about the FIR case, and, requested him to arrive at the crime site. Consequently, the DSP arrived, at the crime site, and, after introducing himself to the accused persons, and, also his informing them that, he has a suspicion that, they are concealing heroin, in the crime car, hence he proceeded to search the crime car, and, thereafter, proceedings relating to seizure, and, also qua drawings of cloth parcels qua recovery of 500 grams of heroin, became conducted at the crime site.

3. The weight of the seizure, as made from the crime car makes it to fall within the ambit of commercial quantity thereof, and, thereupon the rigors of Section 37 of the Act are applicable, and, resultantly unless the learned counsel for the petitioner is able to demonstrate that, there are blatant flagrant breaches, visited upon the relevant statutory provisions, as such, this Court would become constrained to not admit the present bail petitioner to regular bail.

4. Apparently, the search of the crime car was made in the interregnum *inter-se* sunset, and, sunrise. Resultantly, the learned counsel for the petitioner argues that, when the recovery of contraband from the crime car, upon its

becoming searched by the concerned, and, also with the above seizure carrying the above weight, rather was a sequel of prior information with the investigating officer concerned. Therefore, he argues that a dire per-emptory statutory necessity became cast, upon the investigating officer concerned, to for validating the search, and, seizure, both procure, and, also hold with him, and, at the relevant time, hence the apposite warrants or authorization(s). However, he submits that the statutorily ordained search warrants or authorizations, were never procured nor were, at the relevant time rather held by the investigating officer concerned, and, as such he argues that, neither the entry into the car nor search thereof, and, nor besides the seizure of the contraband, as effected therefrom(s), can ever acquire any hue of validity.

5. The above made argument is *prima-facie* valid, as a dire statutory necessity, is in the above event rather cast, upon the investigating officer concerned, to perform the above statutorily ordained acts, for his hence validating the relevant entry, search besides the retrieval(s)/seizure, of the apposite contraband, from the crime car.

6. Nonetheless, the investigating officer concerned, could not yet relieve or relax, the rigor of the above statutory condition precedent, appertaining to a valid search, at the relevant time, being made of the crime car, if he had recorded reasons in writing that, in case time is consumed to obtain the search warrants or authorizations, thereupon every opportunity would become afforded to the offenders rather to conceal evidence or to flee from the crime site.

7. However, the above mode of relaxation(s) to the condition precedent (*supra*), would become galvanised vis-a-vis the police, only in the event when, at the crime site, there was a single or duo of unarmed policeman,

whereas, the numerical strength of the offenders evidently being higher, and/or, thereupon alone, there could be a well founded, and, genuine reason for dispensing, with the statutory requirements, of search warrants or authorizations, being held by the police, imperatively preceding the relevant search of the conveyance, otherwise not. However, since it is stated at the bar, by the learned State Counsel that, a sufficient posse of policemen was available, at the crime site, thereupon when they could obviously preclude the offenders from fleeing from the crime site, and, also preclude them, from their concealing the contraband, at a place other than, the crime car wherefrom it became recovered. Therefore, even if the above reason become recorded rather to dispense with the statutory necessity of the investigating officer concerned, procuring, and, holding with him, and, at the crime site, the statutory warrants or authorizations, rather for the relevant purpose, yet for the reasons (*supra*), the said reason could never acquire any *iota* of validity.

8. Though in the face of the above, the learned counsel for the petitioner succeeds in establishing that, a deep, and, pervasive breach, has been caused to the mandate occurring in Section 42 of the Act, but yet for the reasons to be assigned hereinafter, this Court disagrees with his above submission.

9. The primary reason for disagreeing, with the above submission, is founded, upon the factum that, the play of Section 42 erupts, upon a prior information being held by officers, lesser in rank to a gazetted police officer, but if, the relevant proceedings appertaining to search of the crime vehicle, especially, upon their occurring, in the interregnum *inter-se* sunset, and, sunrise, and, they become drawn by or in the presence of a Gazetted Officer, thereupon the mandate of Section 41(2), of the Act, becomes aroused, provisions whereof are extracted hereinafter.

41. Power to issue warrant and authorisation.—(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 para-military 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 a person or search a building, conveyance or place.”

10. A studied perusal of sub-Section 1 of Section 42 of the Act, provisions whereof stands extracted hereinafter reveals that, they apply to officers, who are in the rank superior to a peon, sepoy or constable, but obviously are not co-equal to or equivalent, in rank to a Gazetted Officer, and, who on a prior information conduct search of a building, conveyance or enclosed place, and, such search becomes rather held in the interregnum *inter-se* sunset, and, sunrise. However, in respect of a prior information, leading to search of, and, seizure from a conveyance, and, it, rather occurring in the interregnum *inter-se* sunset, and, sunrise, and, besides it being held by an officer of a gazetted rank, of the Excise or Police or other Departments, of the Central

or the State Government, resultantly then as, above stated the mandate carried in sub-Section 1 of Section 42 of the Act, becomes sparked.

“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 personal 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 now 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.”

11. Now, sub-Section 2 of Section 41 embodies a mandate that, the Gazetted Rank Officer of Police or of the Excise Department, either personally or through authorizing any officer subordinate to him, but superior in rank to peon, sepoy or constable, rather can cause the lawful arrest of the offender, at the crime site, and, can also cause lawful search of the building or conveyance or place “whether by day or by night”, and, the above valid actions may ensue even from a prior intimation. The statutory words, as occur therein “whether by day or by night”, carry the resultant effect, that when the search of a building or conveyance, is made, even in the interregnum *inter-se* sunset, and, sunrise, but is made by a gazetted rank officer of the Police, Excise or other Departments, as named therein, thereupon *per-se* the relevant entries, searches, and, retrievals therefrom, of the contraband, becoming validated, even without the officer concerned, not at the relevant time, holding in his possession, the search warrants or authorizations, from the Illaqa Magistrate or the Executive Magistrate concerned. If so, it has to be tested qua whether the relevant entry into the conveyance/crime car, and, thereafter, its search, and, ultimately the

retrieval/seizures, therefrom of the contraband, rather was made, either by a Gazetted Officer or was made by an investigating officer, under, a scribed authorization to him, by a Gazetted Officer.

12. In the above regard, the learned State Counsel, has placed on record a consent memo signed by the DSP, STF Border Range, Amritsar, and, who uncontrovertedly is a Gazetted Police officer, hence holding a gazetted rank, and, if so, even if, in the interregnum *inter-se* sunset, and, sunrise, in his presence, and/or, by him, upon any prior information, rather the accessings were made into the crime car, and, if thereafters, the crime car became searched, and, subsequently the retrievals/seizure(s) therefrom, of the contraband also occurred, rendering it to be a weight opposite to commercial quantity thereof. In sequel *per-se* the above performed acts, even if there, was a prior information in respect thereof, rather with the investigating officer concerned, did not bring into force Section 42 of the Act, but attracted sub-Section 2 of Section 41 of the Act. Therefore, when compliance thereto has been meted, through a consent memo placed on record, contents whereof are reproduced hereinafter. In consequence neither the entries made into the crime car nor search thereof nor retrieval/seizure therefrom of the contraband, can ever be inferred to become ingrained, with any stain, of any blatant transgression being made to any statutory provision(s), as, embodied in the Act.

“MEMO OF CONSENT

In the presence of the below mentioned witnesses, Sh. Varinder Kumar PPS, DSP, STF Border Range Amritsar told accused Navjot Singh @ Jota s/o Gurmej singh R/o Village Fattubhila PS Kathunangal Distt. Amritsar that I am Varinder Singh PPS is posted as DSP at STF Border Range Amritsar. I am wearing my uniform and name plate is affixed on it and I am a Gazetted Offier appointed by the Govt. Of Punjab. I have received

an information that you have heroin with you for which your search and search of your car No.PB02-BD-7666 colour white in the presence of Magistrate Sahib or any other Gazetted Officer, which I can arrange. On this the accused Navjot Singh @ Jota above replied and said that I have full faith on you and I want my search and search of my car Breeza No.PB02-BD-7666 colour white in your presence. On this memo of consent of accused Navjot Singh @ Jota was prepared as per procedure and was signed by witnesses.

13. Be that as it may, the learned counsel for the petitioner, has yet argued, that though the learned Illaqa Magistrate before whom, the case property, became produced though had, as, reflected in Annexure P-5, contents whereof becomes extracted hereinafter, rather only on plastic vials, made thereons seals' bearing mark impression GS, and, VS, but he submits that, yet when the case property became transmitted to the FSL concerned, and, whereons an incriminatory opinion became rendered, upon contents thereof, that then there, rather as revealed by Annexure P-6, the parcel(s) being echoed to become carried in cloth parcels. Therefore, he argues that the incriminatory opinion, as, made on the contents of the sample parcel(s), rather remains unconnected with the bulk, and, as such, he claims that relief of regular bail, be granted to the petitioner.

“State Vs. Galwinder Singh & etc.

FIR No.142 dated 27.10.2020

U/S 21/25/29/61/85 of NDPS Act.

P.S. STF SAS Nagar, Amritsar.

Present: IO in person.

All Accused in custody.

Paper put up before me (sic) being Duty Magistrate. Heard on request made by the investigating agency for seeing the case property drawing the sample and for depositing the same in judicial Malkhana. Case property seen today in the shape of one bulk parcel allegedly containing 500 gms of Heroine which is sealed with mark impression VS, VK and KS. The sample seals are also seen.

The bulk parcel allegedly containing 500 gms of Heroine sealed with mark impression VS, VK and KS opened by breaking the seal and two samples of 5/5 gms each of alleged heroine drawn from the above plastic containers, rather making the same homogeneous. The above said small plastic containers are now sealed with seals bearing mark impression GS and VS, one of the said parcel is handed over to SI Vinod Sharma to be sent to Chemical Examiner for the purpose of analysis and remaining two parcels (one bulk of 490 gms and one sample of 5 gms) with seal bearing mark impression Gs and VS are handed over to concerned IO/SI Vinod Sharma for its safe custody to be placed in the judicial Malkhana by him against proper receipt. Representative sample is thus drawn in my presence in compliance of provisions contained in section 52-A, the NDPS Act. Sample Seal and M-29 have also been seen today. Paper be sent to the concerned court.

(Gursher Singh)

Judicial Magistrate Ist Class (D)

Amritsar: 28.10.2020”

14. However, the above made argument is not accepted, as thereons, he appears to erect an argument, qua tampering being done with the case property. However even if in Annexure P-5, the learned Judicial Magistrate, has recorded that, the case property was produced before him, in small plastic containers, but thereafter, he has recorded that, the case property was sealed with seals bearing impression GS, and, VS, and, yet though he has not mentioned therein, that, the above made seals were made, after the small plastic containers containing the sample heroin, upon being, as such becoming produced before him, were thereafter enclosed in cloth parcels. Nonetheless the above omission does not, at all convey that, the produced before him, small plastic containers, were not thereafter, put inside cloth parcel(s), and, whereon seals' bearing impressions GS, and, VS became embossed. The reason becomes comprised in the factum, that to the knowledge of a reasonable man of ordinary prudence, seal impression's cannot be latched onto small plastic containers, but can only

become latched onto the cloth parcels, whereins, the small plastic vials are/were enclosed.

15. Even otherwise, the above purported *inter-se* dichotomy *inter-se* Annexure P-5, and, P-6, in respect of the above, can become well be explicated by the author of Annexure P-6, and, also by the Incharge of the Malkhana concerned, and, that too, when the trial against the accused opens, and, if so awaiting a valid explication in respect thereof, from the author of Annexure P-6, and, from the Incharge of the Malkhana concerned, this Court cannot at the stage, form any opinion that only on account of the above purported *inter-se* contradictions *inter-se* Annexure P-5, and, P-6, rather the present bail petitioner has been able to establish that, the case property, whereons, an incriminatory opinion, about its contents, become recorded by the FSL, does not relate, to the bulk nor it can be concluded, that the sample parcel, as became sent to the FSL rather was tampered.

16. To summarize (I) the provisions of Section 42 of the Act, are applicable to search of buildings, conveyance, and, enclosed space, but the above may apply upon “any prior information” being received by the investigating officer concerned, and, also when searches' thereof, become conducted in the interregnum *inter-se* sunset, and, sunrise. However, the afore provisions are applicbale only to the designated thereins officers, who are not of the rank of a Gazetted Officer(s).

(II) If upon a prior information, and, in the interregnum *inter-se* sunset, and, sunrise hence the search of a building, conveyance or enclosed space rather is made by a Gazetted Rank Officer, and/or, in the latter's presence, and/or, under his authorization(s), by rather those officials, as, mentioned in sub-Section 1 of Section 42 of the Act, resultantly as such, even absences at the

relevant time, of search warrants/or, authorizations, rather render, the makings of searches thereof, and, also retrieval/seizure(s) therefrom hence of the contraband concerned, to be both valid, and, also completely protected by the provisions (supra).

(III) The import of a conveyance as carried both in the sub-Section 1 of Section 41, and, in sub-Section 1 of Section, 42 of the Act, is qua, it appertaining to a conveyance shuttered with doors. The reason being, that on applying the rule of ejusdem generis, qua the accompanying thereto coinage(s) inasmuch as, to “conveyance, building, and, enclosed” and, when the latter coinages connote, enclosure(s) barricaded by doors or shutters, therefore, the coinage “conveyance” would too hold an alike meaning. In consequence, a conveyance with doors, attracts qua itself the mandate of both Sections 41, and, 42 of the Act, but an unshuttered or doorless conveyance, as a scooter, does not attract qua itself, the above provisions. In sequel, the above doorless mode of transport, can even, if there is any prior information, qua contraband, becoming carried therein, rather become lawfully searched, even in the interregnum *inter-* sunset, and, sunrise, and, also by any police officer of any rank, even if he has no valid search warrants or authorizations, nor is he required to abide by the last proviso engrafted in Section 42 of the Act.

17. There is no merit in the petition, and, the same is dismissed.

(SURESHWAR THAKUR)
JUDGE

10.08.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No