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2024:PHHC:131065



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

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Date of Decision: 03.10.2024

Sabbir Khan

...Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Saurav Bhatia, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 439 of the Cr.P.C. with a prayer to grant a regular bail in case FIR No.274 dated 19.07.2023 registered under Section 20(b)(ii) B of NDPS Act at Police Station Bilaspur, District Gurugram (Haryana).

2. As per the case of the prosecution, on 19.07.2023, Anil ASI was present alongwith other police officials and an information was received from a secret informer that one person Sabbir Khan would come from the side of Palwal and was carrying intoxicant substance in his truck on K.M.P. Highway and would come towards Mansa. If a raid naka was set up near Pachgawa toll, the person,



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namely, Sabbir Khan could be apprehended with truck and the narcotic substance. Accordingly, a nakka was set up on K.M.P. Highway and at the instance of the secret informer, a truck was stopped and the driver of the truck was apprehended. The driver disclosed his name Sabbir Khan son of Akbar, resident of village Mohalaka, District Nuh. A notice under Section 50 was served on him and after searching the truck, 3 quintals and 59 Kgs Ganja was recovered from the truck. By following the legal procedure, the accused was arrested and the case property was taken into possession by the police. Learned counsel for the petitioner further contended that the petitioner has been falsely implicated in the present case and was arrested on 19.07.2023 without following the due process of the law. Even the ground of arrest were not supplied to him. He further submitted that even the rukka was sent after recovery of the contraband and it clearly amounts to tampering with the record. Apart from that, the case was registered in the present case on the basis of the secret information and the mandatory procedure as prescribed under Section 42 of the NDPS Act was not complied by the police. He further contended that the arrest of the petitioner was in violation of the mandatory provisions of Code of Criminal Procedure as well as NDPS Act.

3. On the other hand, learned State counsel opposed the submissions advanced by the learned counsel for the petitioner by



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alleging that the petitioner was arrested at the spot. She further contended that in the present case, the accused found carrying 3 quintals and 59 Kgs of Ganja without any permit or licence and the said quantity falls within the ambit of “commercial quantity” and the bar contained in Section 37 of the NDPS Act would apply to the facts of the present case. She further contended that in the present case, the local police was not required to follow the provisions of Section 42 and 50 of the NDPS Act, still, the police had duly complied with the said mandatory provisions of the NDPS Act. In the present case, the special report under Section 42 of the NDPS Act was sent and proper offer was given to the petitioner in the present case. Learned State counsel further submitted that the petitioner was involved in a serious crime and the petition was liable to be dismissed by this Court.

4. I have heard the rival contentions raised by the learned counsel for the parties and the record of the case has been carefully perused.

5. In fact, the object of the Narcotic Drugs and Psychotropic Substances Act is to make the stringent provisions for the control and regulation of operations relating to those drugs and substance. At the same time, to avoid the harm to the innocent persons and to prevent the abuse of the provisions by the officers, certain safeguards have been provided in the statute, which have been observed strictly. These



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provisions make it obligatory that the officers connected with the raids must follow the said provisions carefully while carrying out arrest and search, as provided in the Act. To that extent, such procedure is mandatory. However, the failure to comply with these requirements affects the prosecution case and, therefore, ultimately, vitiates the trial.

6. One more question, which arises for consideration in the present case is whether the conditions laid down in Section 50 of the NDPS Act were applicable to the facts of the present case and whether the said provisions were complied by the concerned officer, while affecting the search. In the present case, a recovery of 3 quintals and 59 Kgs of Ganja was made from the truck, which was being driven by the present petitioner. The Hon'ble Supreme Court has held in the matter of **State of Punjab Vs. Baldev Singh, AIR 1999 SC 2378** that Section 50 of the NDPS Act would come into play only in the case of search of a person as distinguished from search of any premises etc.

7. In the present case, a huge recovery was effected from the truck and it cannot be held that there was non compliance of Section 50 of the NDPS Act. A bare perusal of Section 50 shows that it applies in the personal search of a person and it does not extend to a vehicle, a container, a company or premises. The scope and ambit of



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Section 50 of the NDPS Act was also examined by the Hon'ble Supreme Court in the matter of ***State of H.P. Vs. Pawan Kumar, 2004(4) RCR Criminal: 2005(4) SCC 350*** and held as follows:-

"10. We are not concerned here with the wide definition of the word "person", which in the legal world includes corporations, associations or body of individuals as factually in these type of cases search of their premises can be done and not of their person. Having regard to the scheme of the Act and the context in which it has been used in the section it naturally means a human being or a living individual unit and not an artificial person. The word has to be understood in a broad common-sense manner and, therefore, not a naked or nude body of a human being but the manner in which a normal human being will move about in a civilized society. Therefore, the most appropriate meaning of the word "person" appears to be -- "the body of a human being as presented to public view usually with its appropriate coverings and clothing". In a civilized society appropriate coverings and clothings are considered absolutely essential and no sane human being comes in the gaze of others without appropriate coverings and clothings. The appropriate coverings will include footwear also as normally it is considered an essential article to be worn while moving outside one's home. Such appropriate coverings or clothings or footwear, after being worn, move along with the human body without any appreciable or extra effort. Once worn, they would not normally get detached from the body of



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the human being unless some specific effort in that direction is made. For interpreting the provision, rare cases of some religious monks and sages, who, according to the tenets of their religious belief do not cover their body with clothings, are not to be taken notice of. Therefore, the word "person" would mean a human being with appropriate coverings and clothings and also footwear.

11. A bag, briefcase or any such article or container, etc. can, under no circumstances, be treated as body of a human being. They are given a separate name and are identifiable as such. They cannot even remotely be treated to be part of the body of a human being. Depending upon the physical capacity of a person, he may carry any number of items like a bag, a briefcase, a suitcase, a tin box, a thaila, a jhola, a gathri, a holdall, a carton, etc. of varying size, dimension or weight. However, while carrying or moving along with them, some extra effort or energy would be required. They would have to be carried either by the hand or hung on the shoulder or back or placed on the head. In common parlance it would be said that a person is carrying a particular article, specifying the manner in which it was carried like hand, shoulder, back or head, etc. Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the Act."

8. Still further, learned counsel for the petitioner had canvassed that mandatory provisions of Section 42 had not been



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followed in the present case whereas the learned State counsel submitted that the provisions of Section 43 would apply to the facts of the present case. The material difference between the provisions of Sections 42 and 43 of the NDPS Act is that Section 42 requires recording of reasons for believing and for taking down of information received in writing with regard to the commission of an offence before conducting search and seizure. Section 43 does not contain any such provision and as such while acting under Section 43 of the NDPS Act, the empowered officer has the power of seizure of articles etc., and the arrest of a person, who is found to be in possession of any narcotic drugs and psychotropic substances in a public place where such possession appears to him to be unlawful.

9. In the present case also, the State counsel has rightly submitted that the provisions of Section 43 of the NDPS Act would be applicable and provisions of Section 42 of the NDPS Act are held to be not applicable. Even otherwise, a notice under Section 42 of the NDPS Act was also issued and the provisions were otherwise sufficiently complied with.

10. Apart from that, I have carefully perused the record of the case. It is apparent from the record that the police had complied with the mandatory provisions of law. The petitioner was apprised of his rights, at the time of his arrest and due process had been followed



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by the police. Moreover, the quantity of 3 quintals and 59 Kgs of *Ganja*, which was recovered from the petitioner, falls within the ambit of commercial quantity, as per the provisions of NDPS Act and the bar contained in Section 37 of the Act would be applicable to the facts of the present case. Thus, finding no merit, the present petition is ordered to be dismissed.

11. The above observations have been made for the limited purpose of the disposal of the bail application and the trial Court shall decide the trial, on the strength of the evidence led by the parties, uninfluenced by the above observations.

03.10.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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