

(2007) 10 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 40839-M of 2007 & Criminal Miscellaneous No. M-40839 of 2007

Mukand Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 15, 42, 42(2), 43, 44

Citation : (2007) 4 RCR(Criminal) 767

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : K.V. Singh, for the Appellant; M.C. Berry, Sr.DAG, Punjab, for the Respondent

Judgement

Ranjit Singh, J.—The Petitioner has filed this petition, seeking regular bail in an offence u/s 15 of the Narcotic Drugs Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act").

2. At the time of issuing notice in this case, it was observed that recovery of 2 bags of poppy husk is shown from bed room of the Petitioner while he was not present. The Petitioner has raised a plea of his false implication due to enmity with the Sarpanch. None of the occupant of the house was also arrested at the time of recovery. Noticing these facts to be a bit strange, the police officer conducting the raid was directed to file an affidavit, indicating the authority with which search of the house was carried out without obtaining a search warrant. The Petitioner was directed to be released on bail on 16.8.2007. Affidavit in response to the direction is stated to have been filed. The same is taken on record. In the affidavit, SI has taken shelter behind the provisions of Section 42 of the Act to justify this search etc. In response, Mr. Berry has referred to Section 42 of the Act to justify the action of the police officer to conduct raid without obtaining search warrant. Mr. Berry was confronted with the requirement contained in Section 42 of the Act. This Section empowers an officer to enter into

search, seizure or arrest without warrant or authorisation any person but at the same time, such an officer is under obligation to take out the information given by any person in writing that any narcotic drug or psychotropic substance, in respect of which an offence punishable under this Act has been committed, has been concealed etc. As per the proviso, if such an 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 sun set and sun rise after recording the grounds of his belief. Sub-section (2) of Section 42 clearly provides that 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 72 hours send a copy thereof to his immediate official superior. It was conceded that neither the secret information received was reduced into writing nor the information thereof was sent to immediate superior officer in terms of Section 42(2) of the Act. This may give an indication that this search and seizure was not on the basis of an information but was done with some purpose and motive, which may be as is alleged by the Petitioner. If it had been a sincere effort to search and seizure of narcotics etc., then the police was bound to put any occupant of the house in arrest, even if the Petitioner was not present. The police officers are expected to act in accordance with law. They can be made responsible if they violate any provision of law. If this search and seizure is motivated with the purpose as alleged in the petition, then the police officer cannot be allowed to escape responsibility. The sweep of the provisions of the Act is so wide and stringent that any false implication thereunder leads to serious violation of the right to life and liberty of an individual. It is in this background that provisions of Section 58 of the Act have been enacted, which reads that any person empowered u/s 42 or Section 43 or Section 44, without reasonable ground of suspicion enters or searches, or causes to be entered or searched, any building, conveyance or place vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any narcotic drug or psychotropic substance etc. or if he vexatiously and unnecessarily detains, searches or arrests any person, shall be punished with imprisonment of term, which may extend to a period of six months or fine etc. Even a person willfully and maliciously giving false information and so causing an arrest or a search is also made liable for imprisonment for a term, which may extend to two years or with fine or both. That being the position, any violation of the provisions of the Act can not be glossed over. Since the Petitioner is likely to face prosecution in this case, any comment at this stage in regard to the conduct of the Investigating Officer in carrying out this search may prejudice the case of either side. It would be, thus, appropriate to leave this aspect to be seen during the course of trial by the trial Court. However, it needs to be observed that trial Court will particularly look into this aspect and in case it is found that this search and seizure is vexatious or was without reasonable suspicion and has resulted in unnecessary detaining of the Petitioner etc., necessary consequences that flow u/s 58 of the Act would be

allowed to have effect and action accordingly would be directed.

3. Let a copy of this order be sent to the Judge, Special Court, Patiala, for being kept on record and for taking the same into consideration as per the direction afore-mentioned.