

HIGH COURT OF PUNJAB AND HARYANA**Bench : JUSTICE PANKAJ JAIN****Date of Decision: 1st April 2024****CRA-S No.2558 of 2023****Avtar Singh @ Jagtar Singh @ Jagga ...Appellant****Versus****State of Punjab ...Respondent****Legislation:**

Sections 21(b), 31, 42, 50, 52(a) of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), 1985

Subject: Appeal against the conviction of Avtar Singh @ Jagtar Singh @ Jagga for offences under the NDPS Act – Essential compliance with Section 42 of NDPS Act debated.

Headnotes:

Compliance with Section 42 NDPS Act – Challenge to Conviction – Conviction for Offense under Section 21(b) read with Section 31 NDPS Act Upheld – Evidence and Procedure Examined – Compliance with Section 42 and 50 NDPS Act Established – Appellant Previously Convicted under NDPS Act – Held, no merit in appeal; conviction and sentence confirmed. [Paras 1-18]

Section 42 NDPS Act – Compliance – Analysis – Examination of compliance with Section 42 NDPS Act in light of Supreme Court precedents – Held, recording of information received under Section 42(1) and sending a copy to the immediate superior is mandatory – Compliance in present case proved as per Exhibit PW11/A – Communication termed as ‘Ruqa’ deemed sufficient for compliance – Conviction upheld on this basis. [Paras 14-18]

Search and Seizure under NDPS Act – Legal Procedure – Held, as per mandate of Section 50 NDPS Act, the search of the appellant was conducted in presence of Gazetted Officer as desired by appellant – FSL report and prior conviction under NDPS Act duly proved – Appellant’s guilt established beyond reasonable doubt. [Para 18]

Decision – Conviction and Sentence Upheld – Appeal Dismissed – Court finds no merit in the appeal based on the examination of compliance with Sections 42 and 50 of NDPS Act and other evidence on record – Conviction and sentence of appellant for offense under Section 21(b) read with Section 31 of the NDPS Act confirmed. [Para 18]

Referred Cases:

- Karnail Singh vs. State of Haryana, 2009(5) R.C.R.(Criminal) 515
- State of Punjab vs. Balbir Singh, (1994) 3 SCC 299
- Abdul Rashid Ibrahim Mansuri vs. State of Gujarat, (2000) 2 SCC 513

- Koluttumottil Razak vs. State of Kerala, (2000) 4 SCC 465
- Sajan Abraham vs. State of Kerala, (2001) 6 SCC 692
- Bahadur Singh vs. State of Haryana, (2010) 4 SCC 445
- Rajender Singh vs. State of Haryana, (2011) 8 SCC 130

Representing Advocates:

Mr. Ashok Giri, Advocate for the appellant.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Challenge is to the judgment of conviction and order of sentence dated 31st of August, 2023 passed by Judge, Special Court, SAS Nagar, Mohali whereby the appellant stands convicted for offence punishable under Section 21(b) read with Section 31 of the NDPS Act and has been sentenced to undergo R.I. for a period of 1 year and to pay a fine of Rs.10,000/- in case FIR No.18 dated 23rd of March, 2019 registered at Police Station STF, SAS Nagar, Mohali.

2. As per the case of the prosecution on 23rd of March, 2019 a secret information was received against the appellant indulging in sale of *heroin*. On the basis of information, concerned police official ASI Faqir Singh sent *ruqa* to police station for registration of FIR and for sending some other IO along with police party on the spot. Police party headed by ASI Bhajan Singh rushed to the spot. Barricading was effected. The appellant was seen coming from Kharar side riding motorcycle bearing No.PB-65-AP-0883. Appellant was signaled to stop. He was served with notice under Section 50 of the NDPS Act. He wished to be searched before a Gazetted Officer. DSP Dev Singh was called on the spot. After the Gazetted Officer introduced himself to the appellant, search was conducted on the directions of the Gazetted Officer. From the right pocket of jeans wore by the appellant, 27 grams of *heroin* was recovered. The contraband was sealed by the Gazetted Officer who handed over his seal to ASI Manjit Singh. On the next day i.e. on 24th of March, 2019, accused along with Form No.29 was produced before the Illaqa Magistrate. Section 52(a) of the NDPS Act was complied with. Photographs of the inventory proceeds were also clicked. Appellant was put to trial. After appreciating the evidence on record, Trial Court found the appellant guilty of

offence punishable under Section 21(b) read with Section 31 of the NDPS Act. 3. While assailing judgment under appeal counsel for the appellant submits that it's a case of non-compliance of Section 42 of the NDPS Act. The compliance of Section 42 being mandatory in nature, the appellant deserves to be acquitted. Counsel for the appellant further submits that as per the case of the prosecution a secret information was received by one ASI Faqir Singh against the appellant. As per the mandate of Section 42 of the NDPS Act, he was required to reduce the same into writing and inform his superior officer. It has been contended that in the present case only *ruqa* was sent by the receiver of the secret information for registration of FIR. A *ruqa* cannot partake character of document containing secret information received in writing to hold that Section 42 was complied with. There being no other document apart from *ruqa* it is evident that Section 42 remains un-complied and thus, as per the mandate of Section 42 as interpreted by larger Bench of Apex Court in the case of **Karnail Singh vs. State of Haryana, 2009(5) R.C.R.(Criminal) 515** the conviction of the appellant cannot be sustained. No other plea has been raised on behalf of the appellant.

4. Counsel for the State on the other hand submits that Section 42 was duly complied with and the *ruqa* was sent by recipient of the secret information i.e. ASI Faqir Singh to his superior officer i.e. Station House Officer, much prior to the search of the petitioner. It has been contended that even as per law laid down in **Karnail Singh's** case (supra), 'reducing the secret information into writing and sending the same to a superior officer within a reasonable time' has been held to be sufficient compliance of Section 42. State counsel thus submits that no fault can be found with a well reasoned judgment passed by the Trial Court wherein the story of the prosecution has been analyzed from all the angles and guilt of the appellant has been proved beyond doubt.

5. I have heard counsel for the parties and have carefully gone through the records of the case.

6. It all started with the information received by ASI Faqir Singh on 23rd of March, 2019. It is claimed that he received a secret information that the appellant, who is habitual of selling contraband is coming to Mohali from Kharar side riding motorcycle bearing No.PB65-AP-0883 and if apprehended, heavy quantity of *heroin* can be recovered. ASI Faqir Singh sent communication to Station House Officer disclosing the said information. He requested for registration of FIR and also requested that another ASI be sent on the spot for further proceedings. Said Faqir Singh appeared as PW11. He proved communication as Exhibit PW11/A. ASI Harbhajan Singh appeared as PW10 and proved noting of FIR on the said communication as Exhibit PW10/14. Counsel for the appellant has raised issue that communication Exhibit PW11/A is a *ruqa* and thus does not meet the requirement of Section 42 of the NDPS Act. Before proceeding further and in order to appreciate the plea raised by counsel representing the appellant, it is necessary to peruse Section 42 of the NDPS Act. The same reads as under:

“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 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.”

7. Section 42 has been subject matter of debate which was settled by larger Bench in the case of **Karnail Singh vs. State of Haryana** (supra). To track evolution of Section 42, it must be reminded that the provision came up for interpretation before Supreme Court in the case of **State of Punjab vs. Balbir Singh, (1994) 3 SCC 299** wherein it was held as under:

“The common question that arises for consideration is whether any arrest and search of a person or search of a place without conforming to the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), becomes illegal and consequently vitiates the conviction. The trial court in these cases acquitted the accused on the ground that the arrest, search and seizure were in violation of some of the relevant and mandatory provisions of the NDPS Act. The High Court declined to grant leave to appeal against the said order of acquittal. Questioning the same the State of Punjab has filed these special leave petitions and appeals. In a few cases, the convicted accused also have questioned their convictions on the ground that arrest and trial were illegal. Since a common question arises in all these matters, they are being disposed of by a common judgment. xxx xxxx
xxx

(1) If a police officer without any prior information as contemplated under the provisions of the NDPS Act makes a search or arrests a person in the normal course of investigation into an offence or suspected offences as provided under the provisions of CrPC and when such search is completed at that stage Section 50 of the NDPS Act would not be attracted and the question of complying with the requirements thereunder would not arise. If during such search or arrest there is a chance recovery of any narcotic drug or psychotropic substance then the police officer, who is not empowered, should inform the empowered officer who should thereafter proceed in accordance with the provisions of the NDPS Act. If he happens to be an empowered

officer also, then from that stage onwards, he should carry out the investigation in accordance with the other provisions of the NDPS Act.

(2-A) Under Section 41(1) only an empowered Magistrate can issue warrant for the arrest or for the search in respect of offences punishable under Chapter IV of the Act etc. when he has reason to believe that such offences have been committed or such substances are kept or concealed in any building, conveyance or place. When such warrant for arrest or for search is issued by a Magistrate who is not empowered, then such search or arrest if carried out would be illegal. Likewise only empowered officers or duly authorized officers as enumerated in Sections 41(2) and 42(1) can act under the provisions of the NDPS Act. If such arrest or search is made under the provisions of the NDPS Act by anyone other than such officers, the same would be illegal.

(2-B) Under Section 41(2) only the empowered officer can give the authorisation to his subordinate officer to carry out the arrest of a person or search as mentioned therein. If there is a contravention, that would affect the prosecution case and vitiate the conviction.

(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total non-compliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there

is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case.

(4-A) If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions 'of Sections 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity.

(4-B) If an empowered officer or an authorised officer under Section 41(2) of the Act carries out a search, he would be doing so under the provisions of CrPC namely Sections 100 and 165 CrPC and if there is no strict compliance with the provisions of CrPC then such search would not per se be illegal and would not vitiate the trial. The effect of such failure has to be borne in mind by the courts while appreciating the evidence in the facts and circumstances of each case.

(5) On prior information the empowered officer or authorised officer while acting under Sections 41(2) or 42 should comply with the provisions of Section 50 before the search of the person is made and such person should be informed that if he so requires, he shall be produced before a Gazetted Officer or a Magistrate as provided thereunder. It is obligatory on the part of such officer to inform the person to be searched. Failure to inform the person to be searched and if such person so requires, failure to take him to the Gazetted Officer or the Magistrate, would amount to noncompliance of Section 50 which is mandatory and thus it would affect the prosecution case and vitiate the trial. After being so informed whether such person opted for such a course or not would be a question of fact.

(6) The provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under Sections 41 to 44 are by themselves not mandatory. If there is noncompliance or if there are lapses like delay etc. then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case."

8. Thereafter, in **Abdul Rashid Ibrahim Mansuri Vs. State**

of Gujrat (2000) 2 SCC 513 the said view was followed as under:

“18. A two Judge Bench of this Court has considered the said question along with other questions in *State of Punjab v. Balbir Singh*, [1994] 3 SCC 299. In paragraph 25 of that judgment the conclusions were laid down, of which what is relevant for this case regarding Section 42(1) is the following:

"(2-C) Under Section 42(1) the empowered officer if has a prior information given by any person, that should necessarily be taken down in writing. But if he has reason to believe from personal knowledge that offences under Chapter IV have been committed or materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search without a warrant between sunrise and sunset and this provision does not mandate that he should record his reasons of belief. But under the proviso to Section 42(1) if such officer has to carry out such search between sunset and sunrise, he must record the grounds of his belief. To this extent these provisions are mandatory and contravention of the same would affect the prosecution case and vitiate the trial.

(3) Under Section 42(2) such empowered officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate official superior. If there is total noncompliance of this provision the same affects the prosecution case. To that extent it is mandatory. But if there is delay whether it was undue or whether the same has been explained or not, will be a question of fact in each case."

19. When the same decision considered the impact of noncompliance of Section 50 it was held that "it would affect the prosecution case and vitiate the trial". But the Constitution Bench has settled the legal position concerning that aspect in *State of Punjab v. Baldev Singh* (supra), the relevant portion of which has been extracted by us earlier. We do not think that a different approach is warranted regarding non-compliance of Section 42 also. If that be so, the position must be the following :

20. If the officer has reason to believe from personal knowledge or prior information received from any person that any narcotic drug or psychotropic substance (in respect of which an offence has been committed) is kept or concealed in any building, conveyance or enclosed place, it is imperative that the officer should take it down in writing and he shall forthwith send a copy thereof to his immediate official superior. The action of the officer, who claims to have exercised it on the strength of such unrecorded information would become suspect, though the trial may not vitiate on that score alone. Nonetheless the resultant position would be one of causing prejudice to the accused.”

9. **Abdul Rashid Ibrahim Mansuri's case** (supra) was further followed in **Koluttumottil Razak Vs. State of Kerala (2000) 4 SCC 465** to hold that:

“6. It is a mandate of Section 42 of the Act that when an officer referred to in Sub-section (1) thereof "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 is kept or concealed he may detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence under the Act. The other requirement of law is that the officer who takes down the information in writing or records grounds for his belief shall forthwith send a copy thereof to his immediate official superior. A three-Judge Bench of this Court held in *Abdul Rashid Ibrahim Mansuri v. State of Gujarat* : that non-compliance with the requirements of Section 42(1) and (2) would render the resultant search and seizure suspect, though that by itself may not vitiate the proceedings.

7. In the present case, unfortunately, apart from the evidence of the police officers there is absolutely no independent evidence to ensure confidence in our mind that the search was in fact conducted by PW 2 as he has claimed. As his evidence is required to be approached with suspicion due to violation of Section 42 of the Act we may require corroboration from independent sources that is lacking in this case.”

10. Supreme Court in **Sajan Abraham Vs. State of Kerala (2001) 6 SCC 692** though held compliance of Section 42 of the NDPS Act is mandatory but called for more pragmatic approach observing as under:

“6. With regard to Section 42, the submission is that PW5 has not recorded the information given by PW3 with respect to the appellant's involvement before proceeding to arrest him in this case. This constitutes violation of Section 42 of the Act. It is true under Section 42(1), the officer concerned, when he has reason to believe from his personal knowledge or information received from any person, he is obliged to take it down in writing if such information constitutes an offence punishable under Chapter IV of the Act and send it forthwith to his immediate superior. Such an officer is empowered to search any building, conveyance and in case of any resistance, break up any door or remove any obstacle for such entry, seizure of such drug or substance and to arrest such person whom he has reason to believe to have committed any offence punishable under the said Chapter. Thereafter such officer has to send a copy of this information forthwith to his immediate superior. Submission is that PW5 after receiving the said information has not communicated it to his immediate superior which constitutes violation of Section 42. In construing any facts to find, whether prosecution has complied with the mandate of any provision which is mandatory, one has to examine it with pragmatic approach. The law under the aforesaid Act being stringent to the persons involved in the field of illicit drug, traffic and drug abuse, the legislature time and again has made some of its provisions obligatory for the prosecution to comply, which the courts have interpreted it to be mandatory. This is in order to balance the stringency for an accused by casting an obligation on the prosecution for its strict compliance. The stringency is because of the type of crime involved under it, so that no such person escapes from the clutches of law. The court however while construing such provisions strictly should not interpret it so literally so as to render its compliance, impossible. However, before drawing such an inference, it should be examined with caution and circumspection. In other words, if in a case, the following of mandate strictly, results in delay in trapping an accused, which may lead the accused to escape, then prosecution case should not be thrown out.”

11. The aforesaid views taken in the case of **Abdul Rashid Ibrahim Mansuri's case** (supra) and the one in **Sajan Abraham's case** (supra) were comparatively analyzed by the Supreme Court in the case of **Karnail Singh Vs. State of Haryana 2009 (5) RCR (Criminal) 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 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.”

12. View taken by Constitution Bench in ***Karnail Singh's*** case (Supra) was again followed in ***Bahadur Singh Vs. State of Haryana (2010) 4 SCC 445*** to hold that :-

“12. It cannot but be noticed that with the advancement of technology and the availability of high speed exchange of information, some of the provisions of the NDPS Act, including Section 42, have to be read in the changed context. Apart from the views expressed in Sajan Abraham's case (supra) that the delay caused in complying with the provisions of Section 42 could result in the escape of the offender or even removal of the contraband, there would be substantial compliance, if the information received were subsequently sent to the superior officer. In the instant case, as soon as the investigating officer reached the spot, he sent a wireless message to the Deputy Superintendent of Police, Kurukshetra, who was his immediate higher officer and subsequent to recovery of the contraband, a Ruqa containing all the facts and circumstances of the case was also sent to the Police Station from the spot from where the recovery was made on the basis whereof the First Information Report was registered and copies thereof were sent to the Ilaqa Magistrate and also to the higher police officers. As was held by the High Court, there was, therefore, substantial compliance with the provisions of Section 42 of the NDPS Act and no prejudice was shown to have been caused to the accused

on account of non-reduction of secret information into writing and non-sending of the same to the higher officer immediately thereafter.

13. Apart from the decision in Sajan Abraham's case (supra), the decision of the Constitution Bench in Karnail Singh's case (supra), has also made it clear that non-compliance with the provisions of Section 42 may not vitiate the trial if it did not cause any prejudice to the accused. Furthermore, whether there is adequate compliance of Section 42 or not is a question of fact to be decided in each case."

13. The same was further followed in **Rajender Singh Vs. State of Haryana (2011) 8 SCC 130** to observe that:

4. A reading of the above said provision pre-supposes that if an authorized officer has reason to believe from personal knowledge or information received by him that some person is dealing in a narcotic drug or a psychotropic substance, he should ordinarily take down the information in writing except in cases of urgency which are set out in the Section itself. Section 42(2), however, which calls for interpretation in the matter before us, is however categorical that the information if taken down in writing shall be sent to the superior officer forthwith. In Karnail Singh's case, this Court has held that the provisions of Section 42(2) are mandatory and the essence of the provisions has been set out in the following terms:

"In conclusion, what is to be noticed is that 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 Sections 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 register concerned 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 with requirements of subsections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with 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 writing the information received, before initiating action, or non-sending of 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."

5. It is therefore clear that the total non-compliance with the provisions sub-section (1) and (2) of Section 42 is impermissible but delayed compliance with a satisfactory explanation for the delay can, however, be countenanced. Xxx xxx”

14. Thus, from the aforesaid precedents, it can be concluded that:

- a) Compliance of Section 42 of the NDPS Act is mandatory;
- b) The compliance as contemplated under Section 42(1) and 42(2) of the NDPS Act including that in the proviso with regard to writing down the information received and the grounds of belief are mandatory;
- c) To interpret the same pragmatically, in some cases the prosecution may comply the same with some delay;
- d) The delay needs to be explained.
- e) Where cogent explanation has been offered by prosecution for delayed compliance, onus shifts on accused to prove prejudice caused on account of such delay.
- f) Total non-compliance of Section 42 of the NDPS Act is impermissible;
- g) Non-compliance of Section 42 of the NDPS Act itself may not vitiate the trial but puts case of prosecution under cloud of doubt.

15. Coming on to the facts of the present case, the communication i.e. *ruqa* sent by the recipient of secret information i.e. ASI Faqir Singh to the Station House Officer, Exhibit PW11/A is reproduced herein below:

“SHO, Police Station STF Phase-4 Mohali Jai Hind

Today, I ASI alongwith ASI Harbans Singh 154/SAS Nagar in a private vehicle was present at Part City Chowk, Industrial Area, Mohali in connection with the search of drug traffickers. There the special informer informed me, the ASI that Avtar Singh @ Jagtar Singh

@ Joga s/o Anoop Singh resident of Manakpur Sharif, Police Station Block Majri, District SAS Nagar, who is habitual of selling intoxicants is coming on his motorcycle bearing no. PB-65-AP-0883 from Kharar side to Mohali through Airport Road. At this time, he is in possession of heroin in huge quantity. If search is conducted on him by apprehending him on holding a nakka near TDI Colony Mohali then a huge quantity of heroin can be recovered from him. The information is true and reliable. As abovesaid Avtar Singh has been caught time and again and running the business of heroin again and keeping heroin in his possession so an offence u/s 21-31-61-85 NDPS Act is made out against him. Hence, this ruqa is registered and file number thereof be intimated and an ASI be sent at the spot for conducting investigation. I depart to the boundaries of TDI Colony, Mohali.

In the boundaries of : - Park City Chowk, Mohali.

At 6.30 PM

Sd/Faqir Singh, ASI
18-FGS”

16. ASI Faqir Singh appeared as PW11. His statement reads as under:

“PW-11 on SA: Statement of ASI Fakir Sing.. No.18/FGS, PS STF Phase-IV, SAS Nagar, Mohali.

Stated that on 23.03.2019 I was posted as ASI, PS STF Mohali and I alongwith police party in connection with checking of Drug Traffickers were present at City Chowk Industrial Area, SAS Nagar, Mohali. At around 5:30 PM I received secret information regarding Avtar Singh @ Jagtar Singh @ Jagga son of Anup Singh, R/o Manikpur Sarif PS Block Majri was indulging in sale of coxicant and he is coming on Motor- cycle bearing no.PB65-AP-083 from Kharar side towards Mohali via Airport Road. If Naka is laid near TDI Colony, Mohali then accused can be apprehended with Heroin. So, I sent ruqa Ex.PW- 11/A through ASI Harbans Singh for registration of the FIR against accused. I also requested through ruqa to send some other 10 alongwith police party to send on the spot.

XXXXXXX by Sh. C.S. Bawa Advocate for accused.

We started from the police station at about 5:30 PM on Motor-cycle. We had not checked any person on the way. The informer came

from Kharar side on motor-cycle. I do not remember the make, colour and number of the said motor-cycle. We reached TDI Colony at about 6 PM. The informer was a Sikh gentleman and he remained with me upto 10 minutes. Thereafter he left the spot but I do not know from which side he proceeded. ASI Harbhajan Singh reached at the place of alleged recovery at about 6:30 PM. Accused came to the spot at about 6:30 PM. IO himself searched the accused. Accused came on motor-cycle. IO can tell whether any independent witness was joined at the spot or not. I left the spot at about 6:30 PM. It is wrong to suggest that no secret informer came before me. I returned back to the police station at about 7:45 PM on the same day. I do not know whether accused was picked by ASI Baljeet Singh from his house. It is wrong to suggest that I am deposing falsely just to complete the chain of link evidence.”

17. A bare perusal of the cross-examination of PW11 ASI Faqir Singh would reveal that not even a suggestion was put to him that the secret information received by him was not reduced into writing. In the considered opinion of this Court, nomenclature of the communication is of no consequence. Requirement of Section 42 as interpreted in **Karnail Singh’s case** (supra) is that an officer who receives information of the nature referred to in sub-Section (1) of Section 42 from any person, is required by law to record the same ‘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). In the present case, Exhibit PW11/A is compliance of Section 42. From the reading thereof, it is evident that after receiving the information, the concerned officer i.e. ASI Faqir Singh recorded the same ‘in writing’ and sent a copy to his ‘immediate official superior’ i.e. Station House Officer prior to taking further action. Merely because it was mentioned as ‘Ruqa’ the same cannot be held to be out of purview of Section 42.

18. In view of above, this Court has no doubt in holding that Section 42 in the present case was complied with and the same stands proved before the Trial Court in terms of Exhibit PW11/A. The mandate of Section 50 was also complied with. The appellant was searched in the presence of Gazetted Officer as desired by him. The contraband was duly sealed. FSL report has been duly proved on record. Prior conviction of the appellant is not denied and the same has also been proved on record. The appellant is a prior convict vide judgment dated 3rd of July, 2015 in FIR No.80 dated 3rd of June, 2012, registered at Police Station Kurali for offences punishable under Sections 15 and 22 of the NDPS Act. In view thereof, no fault can be found with the judgment of conviction impugned in the present appeal. Appellant has been rightly held to be guilty of committing offence punishable under Section 21(b) read with Section 31 of the NDPS Act. Keeping in view the minimum punishment awarded to the appellant as prescribed under law, this Court does not find any reason to interfere in the present appeal. Resultantly, the same is ordered to be dismissed.

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