

**Gurumail Singh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/759657](http://sooperkanoon.com/759657)

**Court :** Rajasthan

**Decided On :** May-17-2005

**Reported in :** RLW2005(3)Raj2084

**Judge :** Harbans Lal, J.

**Acts :** Narcotic Drugs Psychotropic Substances Act, 1985 - Sections 8, 15, 37, 42, 42(1) and 43; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

**Appeal No. :** S.B. Cri. Misc. IInd Bail Application No. 2099 of 2005

**Appellant :** Gurumail Singh

**Respondent :** State

**Advocate for Def. :** Nirmala Sharma, Public Prosecutor

**Advocate for Pet/Ap. :** Vivek Goyal, Adv.

**Disposition :** Appeal rejected

**Judgement :**

**Harbans Lal, J.**

1. This second bail application under Section 439 Cr.P.C. read with Section 37 of the NDPS Act (in short 'the Act') has been filed on behalf of petitioner Gurumail Singh against whom trial is pending along with another accused in the court of

Special Judge, NDPS Cases, Jaipur in Sessions Case No. 21/2004 on charge for the offence under Section 8/15 of the Act, wherein the allegation against him is that he was the driver of truck No. RJ-13-G-0312 where-from contraband poppy straw weighing 2800 Kg. in 70 bags of 40 Kg. each was recovered on a secret tip-off in front of the police station Shivdas pura situated on National High Way No. 12.

2. His learned counsel has contended that the mandatory provisions of Section 42(1) of the Act have been violated in this case in as much as the search and seizure of the contraband has been made between sun set and sun-rise and without making any note of the grounds there for necessitating to do so. In this regard reliance has been placed on the case of 'Hira Lal v. Union of India'- 2004 (2) Cr.L.R. (Raj.) 860.

3. It is next contended by his learned counsel that as per record samples weighing 50 gms. were taken from each of the 70 bags of contraband poppy straw allegedly seized from the truck in question, but the samples which reached the FSL for chemical examination were found to be weighing 1 Kg. 220 Gm. only which discrepancy indicates manipulation with the samples and thus unfair investigation. In this regard reference has been made to the cases of 'Shyam Lal and Ors. v. State of Rajasthan'- 2004 (1) Cr.L.R. (Raj.) 333, 'State of Rajasthan v. Sanwant Singh'- 2001 RCC 11 and 'Biram v. State of Rajasthan'- 2001 (2) RCC 1202.

4. The last contention of the learned counsel is that there is discrepancy in the make and number of the truck from which the contraband article was alleged to be found and recovered which further shows that the entire story of search and seizure is a cooked-up affair.

5. Learned PP on the other hand has contended that as per the seizure memo, the recovery has been effected at 6.35 a.m. on 21.6.2004 i.e., after sun-rise and thus, there is no violation of the provisions of Section 42(1) of the Act. She has further submitted that the authorities referred to by the learned counsel for the petitioner pertain to the final disposal of the case and they are of no avail to the petitioner at this stage of bail.

6. I have given my anxious consideration to the rival submissions made at the bar. I have also perused the relevant documents, earlier orders passed on the bail applications filed in this case as well as the authorities cited at the bar.

7. It may be stated at the out-set that at the stage of bail, it is neither permissible nor desirable to make conclusive and final observations on the merits of the case, for, it may prejudice the case of either side at the trial. However, suffice it to say that the instant case in my view falls under Section 43 of the Act and not under Section 42 of the Act.

8. Section 42 and 43 read 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 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 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 substances 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 V-A 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 V-A 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 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 according 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.

43. Power of seizure and arrest in public place. Any officer of any of the departments mentioned in Section 42 may-

(a) seize in any public place or in transit, any narcotic drug or psychotropic substance or controlled substance in respect of which he has reason to believe an offence punishable under this Act has been committed, and, along with such drug or substance, any animal or conveyance or article liable to confiscation under this Act, any document or other article which he has reason to believe may furnish evidence of the commission of an offence punishable under this Act 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 V-A of this Act;

(b) detain and search any person whom he has reason to believe to have committed an offence punishable under this Act, and if such person has nay

narcotic drug or psychotropic substance or controlled substance in his possession and such possession appears to him to be unlawful, arrest him and any other person in his company.'

9. A bare perusal of these provisions makes it abundantly clear that Section 43 of the Act makes provision of power of seizure and arrest in public place as in this case whereas Section 42 of the Act provides for power of entry, search, seizure and arrest without warrant or authorisation, in any building, conveyance or place. The explanation appended to this section makes it further abundantly clear. Thus, the case of *Hira Lal v. Union of India* (supra), relied upon by the learned counsel is of no avail to the petitioner in the instant case and is clearly distinguishable on facts in as much as it was a case of search and seizure of illicit opium from the person of the accused and not a case of search and seizure from the public place or public conveyance.

10. This apart, the contention with regard to the discrepancies in the weight of the samples seized and received by the FSL and in the make and number of the truck in question can appropriately be decided after the evidence and not at this stage of bail. It is rightly contended by the learned PP that the authorities referred to by the learned counsel for the petitioner in this regard pertain to the final decision of the cases wherein the evidence had already come on record and the court was in a position to come to a conclusion as to whether discrepancy with regard to weight of the samples etc. had any bearing on the merits of the case or not.

11. Therefore, no case for grant of bail to the petitioner is made out in view of the fore-going discussion, huge quantity of contraband article allegedly recovered from the truck in question involving far reaching economic ramifications and wide spread unwholesome adverse effect, it has on the health of the society at large.

12. Hence, this bail application is hereby rejected.