

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

CWP No. 6247 of 2015

Date of Decision: April 06, 2015

Suba Singh

..... Petitioner

Versus

State of Punjab & others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J.(Oral)

Petitioner has approached this Court praying for issuance of a direction to respondents No.3 to 7 directing them to produce the petitioner before the concerned Illaqa Magistrate immediately on his apprehension, in case the petitioner is sought to be arrested in a case under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act'). In support of this contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, AIR 2011 Supreme Court 77.**

It is the contention of the counsel for the petitioner that seven different cases have been registered against the petitioner under the NDPS Act. Out of these seven cases, in six cases he has been granted bail and in one case, he has been discharged by the Court. He, on this basis, contends that the petitioner has been falsely implicated in these cases and his apprehension is that in future also such like cases will be foisted on him.

He contends that as per the provisions of Section 50 of the NDPS Act, the option is to be given to the person for getting the personal search made and the petitioner had been opting for his search before the Magistrate as per the provisions of Section 50 of the NDPS Act, whereas, the respondents have always produced him before the Deputy Superintendent of Police who is a Gazetted Officer. He, thus, contends that a direction may be issued to the respondents that in case, the petitioner is to be arrested under the NDPS Act, he should be produced before the nearest Magistrate.

This contention of the counsel for the petitioner cannot be accepted in the light of the provisions of Section 50 of the NDPS Act which only confers a right upon a person who is to be searched in the presence of the Gazetted Officer or Magistrate as has been provided thereunder. The concerned person whether is to be produced before the Gazetted Officer or the Magistrate is only at the discretion of the Authorized Officer who is about to search him and the choice has not to be left at the discretion of the person concerned. This is to be done as per the provisions as contained under Section 50 which states as follows:-

“50. Conditions under which search of persons shall be conducted.-

(1) *When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.*

(2) *If such requisition is made, the officer may detain the person until he can bring him before the Gazetted*

Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.”

So far as the reliance placed upon the judgment of the Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja's* case (supra) is concerned, it has been held as follows:

“We also feel that though Section 50 gives an option to the empowered officer to take such person (suspect) either before the nearest gazetted officer or the Magistrate but in order to impart authenticity, transparency and creditworthiness to the entire proceedings, in the first instance, an endeavour should be to produce the suspect before the nearest Magistrate,

who enjoys more confidence of the common man compared to any other officer. It would not only add legitimacy to the search proceedings, it may verily strengthen the prosecution as well.”

This is not a mandate of the Hon'ble Supreme Court but only an observation which can be taken into consideration, if the situation so demands.

In view of the above, finding no merit in the present writ petition, the same stands dismissed.

06.04.2015

Harish

(AUGUSTINE GEORGE MASIH)
JUDGE