

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

**AT CHANDIGARH**

**Criminal Misc. No.M-28330 of 2016**

**Date of Decision: 23.09.2016**

Tajbir Singh @ Roshi

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. G.S. Sirphikhi, Advocate  
for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.  
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**HARI PAL VERMA, J. (Oral)**

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.70 dated 9.6.2014 under Sections 21 and 22 of the NDPS Act registered at Police Station Khalchian, Police District Amritsar Rural, District Amritsar.

Learned counsel for the petitioner contends that in the case in hand, provisions of Section 50 of the NDPS Act have not complied with and the petitioner is in custody since 24.2.2016 i.e. after receipt of the FSL report. Otherwise also, the petitioner remain in custody from 9.6.2014 to 5.8.2014 and was on bail from 5.8.2014 to 24.2.2016.

Learned counsel for the petitioner relies upon judgments of this Court passed in the case of **Mohan Singh v. State of Punjab PLR 2005 (1) 425** and CRM-M-28444 of 2011 **Sudesh Singh @ Tandu v. State of Punjab** decided on 18.10.2011 to contend that it is obligatory for the investigating officer to give complete offer to the suspect to get the search conducted in the presence of a Gazetted officer or a Magistrate and that violation of mandatory provisions under Section 50 of the NDPS Act is a relevant consideration at the time of granting bail.

Learned State counsel, on instructions from HC Kulwant Singh, though accepts that as per the FIR, mandatory provisions of Section 50 were not complied with, but says that since the recovery in the case was sudden, therefore, provisions of Section 50 of the NDPS Act were not strictly required to be adhered.

I have heard learned counsel for the parties.

Apart from the earlier custody period of the petitioner from 9.6.2014 to 5.8.2014 i.e. before submission of the FSL report, he is in custody since 24.2.2016 and only 2 prosecution witnesses have been examined and 4 prosecution witnesses have been given up. There are still three more prosecution witnesses who are yet to be examined.

Therefore, considering the fact that the petitioner is in custody for a total period of about nine months and the trial in the case will take sufficient long time, this Court is of the opinion that no useful purpose would be served by keeping the petitioner in custody. Accordingly, the present petition is allowed and the petitioner is admitted on regular bail

subject to his furnishing of bail bonds/surety bonds to the satisfaction of the trial Court.

However, it is made clear that in case the petitioner is found indulged in any other NDPS activity, the prosecution will be at liberty to seek cancellation of bail of the petitioner.

Needless to say that the expression made hereinabove shall not be construed as any opinion on the merits of the case.

September 23, 2016  
**AK**

**( HARI PAL VERMA )**  
**JUDGE**

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No