

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

(224)

CRM-M-42025-2015

Decided on: January 12, 2016.

Balwinder Singh @ Binda

.... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Jasraj Singh, Advocate, for the petitioner.

Mr. Jashan Preet Singh, AAG, Punjab.

M.M.S. BEDI, J (ORAL)

Petitioner was allegedly found in possession of 250 grams of intoxicating powder containing diphenoxylate hydrochloride.

Learned counsel for the petitioner has contended that no doubt the quantity recovered is alleged to be commercial quantity but prima facie the petitioner is entitled to acquittal on account of non-compliance of provisions of Section 50 of the NDPS Act. He has drawn the attention of the Court to the consent memo where the petitioner had been given an offer to be searched before a Gazetted Officer or a Magistrate, by the investigating officer. He has further contended that the said consent memo was prepared to defeat the rights of the petitioner after arresting the petitioner as such the consent memo would fall within the statement made by accused in custody and would be inadmissible.

I have heard learned counsel for the petitioner.

In view of the quantity of intoxicating powder falling in the category of commercial quantity Section 37 of the NDPS Act comes into operation and it will not be appropriate for this Court, at this stage, to form opinion that on account of non-compliance of Section 50 of the NDPS Act, the petitioner could be said to be innocent having not committed any offence. The application for bail has been opposed by counsel for the State.

Petitioner may have a good defence for acquittal on the ground of non-compliance of Section 50 of the NDPS Act, but no ground is made out for grant of bail to the petitioner at this stage.

In the interest of justice, while dismissing the petition, it is ordered that the trial Court shall make earnest endeavour to conclude the trial within a period of five months from the next date of hearing. In case, the trial is not concluded within a period of six months, it will be open to the petitioner to approach this Court again for grant of bail.

(M.M.S. BEDI)
JUDGE

January 12, 2016
harsha