

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

CRM-M-11968-2017 (O&M)
Date of decision: 30.05.2017

GURPREET SINGH @ GOPI

...Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present : Mr. Ashish Aggarwal, Advocate for the petitioner (s).

Ms. Harsimrat Rai, DAG, Punjab
assisted by ASI Manpreet Singh.

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 439 of the Code of Criminal Procedure, the petitioner has sought regular bail in FIR No.429 dated 24.11.2014, registered under Section 22 of NDPS Act, at Police Station City Tarn Taran, Distt. Tarn Taran.

The learned counsel for the petitioner refers to Annexure P-5 (memo of recovery) and Annexure P-6 (memo of personal search carried upon the petitioner) to contend that search was carried out without making an offer to the petitioner in terms of Section 50 of NDPS Act. The learned counsel cites '**State of Rajasthan Vs. Parmanand and another**', 2014(85) ACrC 662 and '**Balinder Singh Vs. State of Haryana**', 2015(1) R.C.R. (Criminal) 972 in support of his contention.

On the other hand, the learned State counsel, on instructions,

submits that it was a chance recovery and the personal search was carried out only to know the contents of the other article. Custody certificate has been filed in the Court, same is taken on record.

Heard.

Hon'ble the Supreme Court in State of Rajasthan's case (supra), has observed as under:-

“12. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, respondent No.1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of respondent No.2 Surajmal was also conducted. Therefore, in light of judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.

13. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before a nearest gazetted officer or a nearest Magistrate or before PW-5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in Baldev Singh, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which only respondent No.2 – Surajmal is stated to have signed for himself and for respondent No.1 – Parmanand. Respondent No.1 Parmanand did not sign.

14. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It

may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before a nearest gazetted officer or before a nearest Magistrate. Similar view taken by the Punjab & Haryana High Court in Paramjit Singh and the Bombay High Court in Dharamveer Lekhram Sharma meets with our approval. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, respondent No.2 Surajmal has signed for himself and for respondent No.1 Parmanand. Respondent No.1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorized respondent No.2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of respondent No.1 Parnanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated."

In view of above and the fact that as per the custody certificate, petitioner has already undergone 01 year and 09 months, trial is likely to take a long time, therefore, no purpose would be served in keeping the petitioner behind the bars, without adverting to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of the trial, on his furnishing bail bonds and surety bonds, to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

30.05.2017
ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No