

207.

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

CRM-M-15497-2017

Date of decision:18.09.2017.

SIKANDAR @ BODHA

... Petitioner

Versus

UT OF CHANDIGARH

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ashish Aggarwal, Advocate,
for the petitioner.

Mr. Yashwant Singh Rathore, APP, UT, Chandigarh.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.196 dated 06.12.2016 under Section 22 of NDPS Act, registered at Police Station Maloya, District Chandigarh.

Learned counsel for the petitioner states that in the case in hand, the allegation against the petitioner is recovery of 40 injections of Buprenorphine 2 ml each from his possession. He further states that as per Section 50 of NDPS Act, the petitioner was required to be searched by a gazetted officer but no such search was conducted upon the petitioner by a gazetted officer. He refers to personal search memo dated 06.12.2016 (Annexure P-5) which reads as under:-

“In the presence of the below mentioned witnesses, the
personal search of the accused Sikander @ Boda S/o Babu

Ram, R/o 2954, DMC, Chandigarh at the time of arrest has been set into motion in accordance with law and nothing material has been recovered from the accused. After preparing the memo of personal search, the signatures of the witnesses have been got appended. The personal search memo regarding recovery of NIL has been prepared.”

Learned counsel for the petitioner has relied upon judgments rendered in **State of Rajasthan Versus Parmanand and another-2014(2) R.C.R. (Criminal) 40** and **Balinder Singh Versus state of Haryana-2015 (1) R.C.R. (Criminal) 972.**

Learned counsel appearing on behalf of U.T. Chandigarh Mr. Rathore is fair enough to accede this argument that the petitioner was not searched by a gazetted officer.

I have heard learned counsel for the parties.

In view of judgments i.e. **State of Rajasthan & Balinder Singh's case** (supra) and noticing the fact that the personal search memo (Annexure P-5) dated 06.12.2016, nowhere suggests that the petitioner was ever searched by a gazetted officer, this Court finds that the provisions of Section 50 of NDPS Act, were not complied with. No other case has been pointed out against the petitioner under the NDPS Act.

Accordingly, present petition is allowed and the petitioner is admitted on bail on his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court.

It is made clear that the observations made hereinabove

trial Court shall be within its right to adjudice/conclude the trial in accordance with law and on the basis of evidence as available on record.

(HARI PAL VERMA)
JUDGE

18.09.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No