

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

**Crl. Misc. No.M-16214 of 2017 (O&M)
Date of Decision: September 28, 2017.**

Bira Ram

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikram Bali, Advocate
for the petitioner (s).

Mr. Luvinder Sofat, A.A.G. Punjab.

SURINDER GUPTA, J.(Oral)

CRM-27984-2017

This is application for placing on record copy of consent memo
Annexure P-2 and order dated 25.07.2017 Annexure P-3.

The same are taken on record subject to all just exceptions.

Application stands disposed of.

CRM-M-16214-2017

The present petition has been filed under Section 439 Code of
Criminal Procedure for grant of regular bail to the petitioner in case FIR
No.267 dated 04.07.2015 registered for the offence punishable under
Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for
short-NDPS Act), at Police Station Phagwara City, District Kapurthala.

Heard.

As per prosecution case, recovery of 350 grams of contraband i.e. Diphenoxylate was effected from the petitioner. The Investigating Officer before conducting the search, has given option to the petitioner to get his search conducted from some Magistrate or Gazetted Officer and has prepared consent memo, wherein petitioner is stated to have given consent that he has no objection if his search is being conducted by ASI Surinder Singh, who was heading the police party. This consent memo is not bearing the signature of petitioner.

Learned counsel for the petitioner submits that this shows that the memo was either not prepared at the spot or the version of the prosecution is not correct.

Learned State counsel on perusal of the police file, admits that consent memo prepared in this case is not bearing signature of petitioner. However, he has submitted that it was a chance recovery and provisions of Section 50 NDPS Act are not attracted in this case.

The question at this stage is not to decide as to whether the provisions of Section 50 NDPS Act are attracted or not. The factual position is that ASI Surinder Singh had given option to the petitioner and prepared a consent memo, which does not bear the signature of the petitioner. The search was conducted pursuant to this consent memo, whereby ASI Surinder Singh was authorised to conduct search of the petitioner. As this memo is not bearing signature of petitioner, it will be a matter to be seen by the trial Court as to whether ASI Surinder Singh was competent to conduct search of the petitioner and if he conducted the search, the authority given to him as per this consent memo was legal and

valid.

Without expressing any opinion on merits of the case, the present petition is allowed. Petitioner Bira Ram is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without the prior permission of the Court.

September 28, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***