

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-2195-2017

Date of decision : 08.03.2017

Paramjit Kaur

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Sahil Puri, Advocate
for the petitioner.

Mr.Sidakmeet Singh Sandhu, AAG, Punjab.

AMOL RATTAN SINGH, J.(ORAL)

Learned counsel for the petitioner submits that there is a violation of Section 50(4) of the N.D.P.S. Act 1985 and further, that the sampling of the contraband alleged to have been recovered from the petitioner was not done by a Magistrate.

He points to the judgment of the Supreme Court in ***Union of India vs. Mohanlal & another, 2016(1) R.C.R. (Criminal) 858***, wherein the following direction was given:-

“(1) No sooner the seizure of any Narcotic Drugs and Psychotropic and controlled Substances and Conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52A(ii) of the Act, which shall be allowed by the Magistrate as soon as may

be required under Sub- Section 3 of Section 52A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the magistrate as discussed in paras 13 and 14 of this order."

In paragraphs 13 &14 of that judgment, as have been referred to in the above direction, it has also been very clearly stated as follows:-

"In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct."

A perusal of the FIR (Annexure P1), shows that there is not even a reference of any sampling of the contraband stated to have been seized from the petitioner, having been done before a Magistrate.

Consequently, in the aforesaid circumstances, without making any final comment, as the petitioner is still facing trial and the entire issue would be gone into by the trial Court, I consider it appropriate to admit the petitioner to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

March 08, 2017.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No