

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

**CRM-M No.30224 of 2017
Date of Decision : 30.08.2017**

Gurjant Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

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

Mr. A.S. Sandhu, Addl. Advocate General, Punjab
for the respondent-State.

SUDIP AHLUWALIA, J. (ORAL)

The instant petition has been filed under Section 439 of the Code of Criminal Procedure (for short, 'the Cr.P.C.') seeking regular bail in case FIR No.102 dated 14th August, 2015, registered under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') at Police Station Bhikhiwind, District Tarn Taran.

Custody certificate is filed in the Court today; be taken up on record.

Seen custody certificate of the petitioner, who would be completing exactly six months of detention in this case today.

Recovery of Diphenoxylate Hydrochloride powder weighing 100

grams was allegedly made from a bag held by him in his hand. The quantum of recovery is certainly above the commercial limit.

It has, however, been asserted on behalf of the petitioner that the mandatory requirement under Section 50 of the NDPS Act of giving him the option to conduct a search on his person, was not fulfilled on account of which the case against him is vitiated in view of the decision of the Hon'ble Apex Court in '***State of Rajasthan Vs. Parmanand and another***', 2014(2) R.C.R.(Criminal) 40, wherein it was held *inter alia* :-

“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.”

This Court has gone through the original FIR, which is totally vague/silent on the question whether search was actually conducted on the “person” of the accused.

However, the Memo of Personal Search dated 14th August,

2015, which is on record as Annexure P-3 sets at rest any doubt that such search was actually conducted, and that compliance by way of the option for search before a Gazetted Officer/Magistrate was not done in the present case.

For this reason and taking into account the detention undergone by the petitioner and the fact that there is no record of any other case of similar nature having ever been filed against him, he may be released on bail pending trial to the satisfaction of the Ld. Trial Court concerned.

Disposed off.

August 30, 2017

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No