

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

CRM-M-35639 of 2017.
Decided on:-01.11.2017.

Avtar Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Mr. M.S. Nagra, AAG, Punjab.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in FIR No.195 dated 05.10.2016 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act) registered at Police Station Kotwali, District Kapurthala.

As per the FIR, the police party was patrolling in the area and was going from Police Station Kotwali to Ghug Bet, and when the police party reached near turn Dera Rava, near brick kiln at Nava Pind, in the meantime, a youth with trimmed hair was seen coming from Dera Rava side. On seeing the police party ahead, he suddenly tried to turn back. Noticing the movement of the petitioner-accused as suspicious, the police party

apprehended him and he revealed his name as Avtar Singh. He was suspected to have some narcotic substance in his possession. Accordingly, the police party offered him to be personally searched in the presence of any gazetted officer/Magistrate. However, the accused stated that he did not want to be personally searched in the presence of any gazetted officer/Magistrate and had shown faith in the police. Accordingly, his memo of consent was written separately. Efforts were made to join any member of the public as independent witness, but nobody came forward and had shown helplessness to join the investigation. Accordingly, the police party searched the petitioner as per procedure and the narcotic substance wrapped in polythene bag was recovered from right pocket of the shirt worn by the petitioner-accused. On weighing the same, it was found to be 150 Grams narcotic substance for which a case punishable under Section 22 of the NDPS Act was made out against the petitioner-accused.

Learned counsel for the petitioner has argued that the provisions of Section 42 read with Section 50 of the NDPS Act have not been complied with by the police which are mandatory, more particularly when the imprisonment of 10 years has been prescribed for having commercial quantity of a narcotic substance. In support of his contentions, he has relied upon judgment of this Court in *State of Punjab Versus Om Parkash 1996(3) RCR (Criminal) 145*. Reliance has also been placed upon judgment of the Apex Court in *Narcotics Central Bureau Versus Sukh Dev Raj Sodhi 2011(3) RCR (Criminal) 370*.

On the other hand, learned State counsel has contended that the petitioner was having commercial quantity of the narcotic substance and was apprehended at the spot. Therefore, he is not entitled to the relief as prayed for.

I have heard learned counsel for the parties.

The allegations against the petitioner-accused are serious in nature. The chemical report has already been received which establishes that the alleged contraband found from the possession of the petitioner contains Alprazolam salt and more than 100 grams of the same falls within the category of commercial quantity. Though earlier the petitioner was released on interim bail, but by that time, the chemical report had not been received. So far as the law laid down in *Om Parkash's case (supra)* and *Sukh Dev Raj Sodhi's case (supra)* is concerned, the petitioner cannot claim any benefit from the same at this stage, as these judgments deal with the appeals and not the regular bail. Therefore, considering the nature of contraband allegedly recovered from the petitioner and the fact that the same falls within the commercial quantity, no case for grant of regular bail is made out.

The present petition is, accordingly, dismissed.

The observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

November 01, 2017

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes

Whether Reportable:

No