

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

**CRM-M No.44411 of 2016
Date of Decision : 02.08.2017**

Parveen and another

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Dr. Anmol Rattan Sidhu, Senior Advocate assisted by
Mr. Nandan Jindal, Advocate
for the petitioners.

Mr. Vikas Malik, Deputy Advocate General, Haryana
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.710 dated 19th November, 2015, registered under Sections 21 (B), 27(A), 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 Act (for short, 'the NDPS Act') read with Sections 18(A) and 18 (C) of the Drugs and Cosmetics Act, at Police Station City Fatehabad, District Fatehabad.

The petitioners along with two other accused persons were allegedly apprehended by the Police party along with 240 phials of Rex Cof cough syrup, while one of their associates managed to flee away.

It is highlighted on behalf of the petitioners that initially they were granted interim bail since the Chemical Analysis Report concerning

the seized contraband was not received for a long time. The same was subsequently received, after which their interim bails were cancelled and they have remained in detention since 16th November, 2016.

The ground on which bail is now sought for, is essentially the non-observation of the prescribed provisions of Section 52-A of the NDPS Act, more particularly Sub-Section 2(b) and (c), which according to Ld. Counsel for the petitioners, cuts at the root of the propriety of the investigation conducted, in view of the directions of the Hon'ble Supreme Court in '***Union of India Vs. Mohan Lal and others***', 2016(3) SCC 379. The material direction of Hon'ble the Supreme Court in this regard is set out as below :-

*“31.1 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 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, 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 15 to 19 of this order.”*

(Emphasis added)

It is in this backdrop that Ld. counsel for the petitioners contends that his clients are entitled to the benefit of bail since the prescribed procedure was admittedly not followed in the present case, and

various Co-ordinate Benches of this Court on this ground have been granting the benefit to the accused side in different proceedings.

In '**Jagraj Singh Vs. State of Punjab**', CRM No.39383 of 2016 in CRA-S No.4482-SB of 2016, the sentence of the convict/appellant was suspended on the ground of alleged non-compliance of the aforesaid provisions; In '**Manu Ram vs. State of Haryana**', CRA-S No.3361-SB of 2016, conviction of the appellant on this ground was itself set aside; In '**Bikram Singh Vs. State of Punjab**', CRM-M No.12946 of 2017, the benefit of bail was extended to the accused for the same reasons while again the sentence awarded to a convict was suspended in '**Surjit Kumar @ Babbu Vs. State of Punjab**', CRM No.39622 of 2016 in CRA-S No.1338-SB of 2015, on account of the alleged non-compliance with the existing provisions under Section 52-A(2) of the NDPS Act, on the basis of which subsequently categorical directions have been issued by the Apex Court in the case of '**Mohan Lal**' (*supra*).

Learned counsel appearing on behalf of the State has sought to emphasise, that any irregularity in the matter of sampling before the Ld. Magistrate cannot be held to be serious enough to vitiate the trial as a whole ('**State of Punjab Vs. Makhan Chand**', 2004(3) R.C.R. (Criminal) 1), and that, crux of Hon'ble the Supreme Court's observations in '**Kuldeep Singh Vs. State of Punjab**', 2010(10) SCC 219, is that samples are required to be collected at the place of seizure itself, failing which the prosecution case would fail.

In the opinion of this Court, these are intricate points of law

touching upon the validity of a complete criminal trial under the provisions of the NDPS Act itself, which may not be very material for consideration at this stage.

It is a matter of record that the petitioners were on interim bail earlier in this case. They did not misuse the liberty granted to them and as the record shows, themselves surrendered before the Ld. Trial Court after their interim bails were cancelled, on receipt of the Chemical Analysis Report. Further, there is admittedly no material on record to indicate their involvement in any other case of similar nature.

For the aforesaid reasons, the present petition is allowed and the petitioners, namely, Parveen and Raj Kumar, are permitted to be released on regular bail to the satisfaction of the Ld. Trial Court concerned.

(SUDIP AHLUWALIA)
JUDGE

August 02, 2017

Dpr

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No