

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

**CRM-M No.13701 of 2018
Date of Decision: 17.04.2018**

**Sarup Singh @ Roop
Vs**

.....Petitioner

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.P.S. Duggall , Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.63 dated 05.04.2017 registered under Sections 22, 61, 85 of the NDPS Act at Police Station Dharamkot, District Moga.

Earlier petition i.e. CRM-M No.32179 of 2017 was allowed to be withdrawn.

Learned counsel for the petitioner submitted that bag of the petitioner was searched in which 100 wrappers of lomotile each containing 20 tablets, 100 tablets of Foridore-DM each

containing 10 tablets and 40 wrappers of Pendor-Fort each containing 10 tablets were recovered. Personal search of the petitioner was also done, wherein 90 currency notes were recovered from the T-shirt of the petitioner. Learned counsel further submitted that only lomofil falls under the NDPS Act and the contraband was detected to be Diphenoxylate Hydrochloride i.e. 127 grams in total which is a commercial quantity as per entry at serial No.44 of the Schedule.

Learned counsel by referring to ratio laid down by the Hon'ble Apex Court in **State of Rajasthan Vs. Paramanand and another, 2014(2) RCR (Criminal) 40, Narcotics Central Bureau Vs. Sukh Dev Raj Sodhi, 2011(3) RCR (Criminal) 370** and **Myla Venkateswarlu Vs. State of Andhra Pradesh, (2012) 5 SCC 226** contended that in case of personal search, Section 50 of the NDPS Act becomes mandatory. Even if the accused opted to be searched before the Investigating Officer by reposing faith, the Investigating Officer was under obligation to bring the accused before the Gazetted Officer or Magistrate in order to impart authenticity, transparency and credit-worthiness to the entire proceedings.

In **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2010(4) RCR (Criminal) 911**, Constitutional Bench of Apex Court has held that compliance of Section 50 of the Act is not

near formality, the accused must be told about existence of his right to be searched in the presence of Magistrate or Gazetted Office before offer is given to him.

By referring to aforesaid, learned counsel contended that *prima facie*, it is established that prosecution has violated the mandatory provisions of law.

The aforesaid facts have not been disputed by learned State Counsel on instructions from HC Ramesh Kumar except to allege that recovery is of commercial quantity.

At this stage, without meaning anything on merits of the case, I deem it appropriate to enlarge the petitioner on regular bail subject to his furnishing adequate bail bonds and surety bonds to the satisfaction of the trial Court.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

April 17, 2018.

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(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No