

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

Criminal Misc.No.M-17144 of 2018 (O&M)

Date of Decision : 13.12.2018

Lakhbir Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Vipul Jindal, Advocate
for the petitioner.

Mr. C.L.Pawar, Senior DAG, Punjab.

RAJ SHEKHAR ATTRI, J. (Oral)

Custody certificate has been filed. Same is taken on record.

The petitioner has preferred the instant petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.57 dated 08.09.2017, registered under Sections 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short 'the Act') and Sections 25 and 27 of the Arms Act, at Police Station Khem Karan, District Tarn Taran.

The petitioner was arrested in this case for having 295 grams of heroin in his possession. The concerned investigating officer gave an option to him to be searched before a gazetted officer or before a Magistrate, he opted to be searched before a gazetted officer. Consequently, DSP Sulakhan Singh, being the gazetted officer, came at the spot, who also gave an offer to be searched before him or before a Magistrate and the petitioner reposed confidence upon him and allow him to be search. On the personal search of the petitioner, heroin was recovered from his possession.

It has been argued that the second consent memo Ex.P3 which was recorded by DSP Sulakhan Singh is not in accordance with the provisions of Section 50 of the Act.

To the mind of this Court, the first memo, which has been recorded by the concerned investigating officer is fully in accordance with law. Regarding the second memo whether it is in accordance with the provisions of Section 50 of the Act or not, it is a question of fact and this shall be considered at the time of adducing evidence. However, the recovery effected from the petitioner falls within commercial quantity.

Hence, no case to grant the concession of regular bail to the petitioner is made out.

Therefore, finding no merit in the instant petition, the same is dismissed.

**(RAJ SHEKHAR ATTRI)
JUDGE**

13.12.2018
mamta

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No