

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

1. CRM-M-17171-2018

Balor Singh

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-17823-2018

Bhura Singh @ Labh Singh

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision: 04.07.2018

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. D. N. Ganeriwala, Advocate &
Mr. Harpreet Singh Sidhu, Advocate
for the petitioner(s).

Mr. Nishchal Mann, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they arise out of the same FIR.

These are the second petitions which have been filed under
Section 439 of the Code of Criminal Procedure for grant of regular bail to
petitioners Balor Singh and Bhura Singh @ Labh Singh in case FIR No. 251
dated 07.09.2016, registered under Sections 21/22/61/85 of the Narcotic
Drugs & Psychotropic Substances Act at Police Station Dabwali Sadar,

District Sirsa.

Learned counsel for the petitioners submits that first application was filed invoking the provisions of Section 167(2) of Cr.P.C., however, the present petitions have been filed on the merits of the case.

Learned counsel for the petitioners submits that the petitioners are in judicial custody since 07.09.2016 and the trial is still at the stage of recording prosecution evidence. Learned counsel for the petitioners further submits that as per the allegations in the FIR, the Investigating Officer, i.e. ASI Jagdish Raj, has opened the bag from where 30 strips of XLPAM 0.5 of Batch No. DVNTC-98 were recovered. Learned counsel for the petitioners further submits that neither notice under Section 50 of the NDPS Act nor any option for being searched before a Gazetted Officer or a Magistrate was given to the petitioners. Learned counsel for the petitioners has relied upon a judgment rendered in *State of Rajasthan vs. Parmanand and Anr., (2014) 5 SCC 345*, wherein, Hon'ble Supreme Court has held that provisions of Section 50 of the NDPS Act are provided as a safeguard to an accused against the possibility of a false involvement and, therefore, the communication of the said right to the person who is about to be searched is not an empty formality as most of the offences under the NDPS Act carry stringent punishment, therefore, the prescribed procedure has to be followed meticulously.

Learned counsel for the petitioners has also relied upon a judgment rendered in *Umarmia alias Mamumia vs. State of Gujarat, (2017) 2 Supreme Court Cases 731*, wherein, Hon'ble Supreme Court has held that in case of long pendency of the trial, an accused is entitled to grant

of bail.

Learned State counsel filed custody certificates which are taken on record. As per custody certificates, petitioner Balor Singh has undergone 01 year, 09 months and 27 days of actual custody and he is not involved in any other case. Similarly, petitioner Bhura Singh @ Labh Singh has also undergone 01 year, 09 months and 27 days of actual custody and he is also not involved in any other case

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the facts that the petitioners are in judicial custody for 01 year, 09 months and 27 days; there are moot points to be decided by the trial Court regarding compliance of provisions of Section 50 of the NDPS Act and in view of the fact that the petitioners are not involved in any other case, the instant petitions are allowed. Petitioners Balor Singh and Bhura Singh @ Labh Singh are ordered to be released on regular bail on their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate concerned.

July 04, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No