

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

**CRM-M No.19052 of 2018 (O&M)
Date of Decision: 10.05.2018**

Sunil Kumar

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Ms. Satpreet Grewal Kapila, Advocate for the petitioner.

Mr. A.S.Dhaliwal, Deputy Advocate General, Punjab
for the respondent/State.

MAHABIR SINGH SINDHU, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.25 dated 16.02.2018, registered under Sections 20/22, 61, 85 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), registered at Police Station Nangal, District Rupnagar.

It is contended by learned Counsel for the petitioner that as per the allegations in the FIR itself, the search was conducted by S.I. Rohit Sharma and the alleged recovery of 60 grams of *Intoxicating Powder* and 50 grams of *Charas* was made from the petitioner. It is further contended that no Gazetted Officer or Magistrate was associated at the time of personal search of the petitioner and thus there is a breach of Section 50 of the NDPS Act.

The above factual position regarding recovery by S.I. Rohit Sharma and non-joining of the Gazetted Officer or Magistrate is not disputed by learned State Counsel, on instructions from H.C. Gurmail Singh, but he submitted that an offer was made to the petitioner regarding his search.

Undisputedly, there is no other case pending against the petitioner under the NDPS Act; the petitioner is in custody since 16.02.2018; the charges have already been framed on 01.05.2018 and there are total 14 prosecution witnesses but none has been examined till date and, therefore, the trial will take a long time to its conclusion. Even otherwise, in this case, *prima facie*, there is a breach of Section 50 of the NDPS Act as neither the Gazetted Officer; nor the Magistrate was associated at the time of personal search of the petitioner when alleged recovery was effected and only an offer was made to him. In view of the judgment of the Hon'ble Supreme Court, passed in **Criminal Appeal No.273 of 2007**, titled as '**Arif Khan @ Agha Khan Versus State of Uttarakhand**', **decided on 27.04.2018**, it has been held that the search and recovery to be in conformity with the requirements of Section 50 of the NDPS Act and the search and recovery should be conducted from the petitioner in the presence of a Magistrate or a Gazetted Officer and mere offer to be searched by the Gazetted Officer or the Magistrate is not sufficient.

In view of above, this Court deems it appropriate to grant the concession of bail to the petitioner and no useful purpose would be served by keeping the petitioner behind the bars. Therefore, this petition is accepted and petitioner-Sunil Kumar is ordered to be released on bail on his

furnishing adequate bail bonds and surety bonds to the satisfaction of
learned trial Court.

May 10, 2018
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>