

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20069-2018
Date of decision:16.5.2018

Gurpreet Singh alias Gopi

.....Petitioner

Versus

The State of Punjab

.....Respondent

CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rajesh Bhatheja, Advocate
for the petitioner.

Mr. Harbir Singh Sandhu, AAG, Punjab.

MAHABIR SINGH SINDHU, J. (ORAL)

This petition has been filed by the petitioner under Section 439 of the Criminal Procedure Code ('Cr.P.C.' - for short) for grant of regular bail in FIR No.236 dated 9.12.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS' – for short) registered at Police Station City Moga, District Moga.

It is contended by learned counsel for the petitioner that at the time of search from the petitioner there was total breach of Section 50 of the NDPS Act as the concerned ASI Mangal Singh has stated that the petitioner has a legal right to get his search conducted either in the presence of Gazetted Officer or Magistrate or '*in his presence*' i.e. ASI Mangal Singh and the recovery of 150 grams intoxicating powder was effected from the right pocket of the trouser of the petitioner.

To a pointed query *as to how the said ASI has given the offer*

to the petitioner to be searched "in his presence" being beyond the scope of Section 50 of the NDPS Act, learned State counsel is not able to justify the same.

Fresh custody certificate produced by the State counsel is taken on record and copy thereof has been supplied to the opposite side.

Learned State counsel has opposed the petition and prayed for dismissal of the same.

Heard both sides.

In view of the above, prima facie the offer given by the ASI was in breach of Section 50 of the NDPS Act. The petitioner is in custody since 10.12.2017. The conclusion of trial is likely to take a long time, hence no useful purpose would be served by keeping the petitioner behind the bars. Consequently, this Court is of the view that it would be just and appropriate if the concession of bail is granted to the petitioner. Therefore, in view of the abovesaid circumstances, without expressing any opinion on the merits of the case, this petition is accepted. Petitioner-Gurpreet Singh @ Gopi be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court/Duty Magistrate.

Senior Superintendent of Police, Moga is directed to conduct an enquiry against the said ASI and to report this Court within four months from today.

(MAHABIR SINGH SINDHU)
JUDGE

16.5.2018
Gaurav Sorot

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |