

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

**Crl. Misc. No.M-20369 of 2018 (O&M)
Date of Decision: July 23, 2018.**

Nanak Ram

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. K.S. Sidhu, Advocate
for the petitioner (s).

Mr. Sandeep Kumar, D.A.G., Punjab.

SURINDER GUPTA, J.(Oral)

This second petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 46 dated 11.03.2017 registered for the offence punishable under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act), at Police Station GRP Ludhiana.

Heard.

Petitioner was arrested on 11.03.2017 and recovery of 3 kg of Charas was effected from his possession.

Learned counsel for the petitioner has sought bail for the petitioner on four grounds; firstly, the contraband is not Charas but Ganja; secondly, the case was investigated by ASI Jiwan Singh, who himself was a complainant; thirdly, there was FIR number mentioned in all the memos

which shows that either the FIR is ante-dated or memos were prepared later; and fourthly, provisions of Section 50 of NDPS Act were not complied. In support of his contention, learned counsel for the petitioner has relied on ***Varinder Kumar Vs. State of Punjab (CRM-22440-2017 in CRA-D-163-DB-2017 decided on 28.05.2018)*** and ***Nagender Shah Vs. State of H.P. 2010(4) RCR (Criminal) 194.***

Firstly, I take the issue as to whether recovery effected from the petitioner was Charas or Ganja. As per Forensic Science Laboratory report dated 07.10.2017, contents of solid material recovered from the petitioner was found to be that of Charas. Report of Forensic Science Laboratory reads as follows:-

“The content of the parcel under reference has been analyzed by chemical analysis. On the basis of presence of Tetrahydrocannabinol and other cannabinoids, Cystolithic hair and 24.38% resin extract, Charas has been found present in the content of the parcel.”

In case relied on by learned counsel for the petitioner, ***Nagender Shah Vs. State of H.P. (supra)***, the laboratory has not conducted test if the stuff recovered from the accused was resin. In this case the test has been conducted and 24.38% of resin extract was found in the substance recovered from the petitioner. Prima facie, the recovery effected from the petitioner is of Charas, as such, the argument advanced by learned counsel for the petitioner has no merits.

Hon'ble Apex Court in case of ***State represented by Inspector of Police Vigilance and Anti Corruption Vs. V. Jayapaul 2004(2) RCR (Criminal) 317***, while answering the question as to whether a police officer,

who received the information and effected the recovery can investigate the case, observed as follows:-

“We find no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased.”

Similar observations were made in case of *Sanjeev Kumar alias Sonu Vs. State of Himachal Pradesh 2001(1) Judicial Reports (Criminal)256*.

Admittedly, recovery was not effected from the personal search of the petitioner but it was effected on the search of backpack on his right shoulder. Compliance of Section 50 of NDPS Act, apply in relation to search of an individual person. The term 'person' essentially include what that person directly possesses on his person at the relevant time. The backpack from which the recovery of contraband was effected, was not part of apparels worn by the petitioner, as such, prima facie recovery was not effected from his personal search. Compliance of Section 50 NDPS Act is not attracted in this case, as such, reference in this regard can be made to the observations of Hon'ble Apex Court in case of *State of Punjab Vs. Balbir*

Learned counsel for the petitioner has raised issue that FIR number find mentioned on the memos prepared in this case. ASI Jiwan Singh while appearing as PW1, has stated that on recovery memo, consent and non-consent memo, no FIR number was mentioned and it was written when ruqa carrier reached the spot. The attention of this witness was drawn towards consent statement Ex.PA and PB, which had no FIR number mentioned on it. At this stage, the above fact is not material and is to be seen by the trial court at the time of final disposal of the case.

Keeping in view the fact that recovery effected from the petitioner is of commercial quantity of contraband, I do not find any reason to extend the benefit of regular bail to the petitioner.

This petition has no merits. Dismissed.

Nothing observed in this order shall have any bearing at the time of disposal of the case on merits.

July 23, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***