

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.22759 of 2018
Decided on: 02.08.2018

Mahesh Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Akash Vashisth, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.379 dated 31.07.2017, for offence punishable under Sections 420, 467, 468, 471 of the Indian Penal Code (in short 'IPC') (Sections 20 and 27-A of the NDPS Act added subsequently), registered at Police Station Dadri Sadar, District Charkhi Dadri.

Counsel for the petitioner has submitted that during the investigation, a joint notice under Section 50 of the NDPS Act was served to the petitioner along with the co-accused namely Subhash @ Seddhu. It is further submitted that even the consent memo with regard to the said notice was also recorded jointly of both the accused persons. It is further submitted that in view of the judgment ***“State of Rajasthan vs Parmanand and another”***, 2014(2) RCR (Criminal) 40, it has been

held by the Hon'ble Supreme Court that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case clear, unambiguous and individual offer is not given to the accused person. It is further held that joint communication of a right may not be clear or unequivocal as it may create confusion and may result in diluting the right.

Counsel for the petitioner has also submitted that the petitioner is in custody for the last about 01 year and is not involved in any other case.

Counsel for the State has filed the Custody Certificate today in the Court and has not disputed the factual position, on instructions from HC Pawan Kumar. It is further submitted that out of 21 prosecution witnesses, only 02 PWs have been examined, so far.

Without commenting anything on merits of the case and considering the fact that the petitioner is in judicial custody for the last 01 year; he is not involved in any other case and it will be a debatable issue to be decided during the course of trial whether the mandatory provisions of Section 50 of the NDPS Act were complied with or not in view of the judgment i.e. *State of Rajasthan's case (supra)*, this petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/ surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any

other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

02.08.2018

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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No