

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.2794 of 2018
Date of Decision: 23.02.2018

SombirPetitioner
Vs
State of HaryanaRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Naveen Kundu, Advocate
for the petitioner.

Mr. Satish Saini, D.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.121 dated 15.06.2017, registered under Section 20 of the NDPS Act (hereinafter to be referred as 'the Act') at Police Station Sanoli, District Panipat.

[2]. Petitioner was arrested on the basis of suspicion and 6 kgs. 600 grams of *charas* was allegedly found in a polythene kept in the bag by the petitioner.

[3]. Learned counsel for the petitioner contended that there was no offer given to the petitioner in respect of his search before the Magistrate. He relied upon **Gurjant Singh @ Janta vs. State of Punjab, 2013(4) R.C.R. (Criminal) 874** and submitted that the Hon'ble Supreme Court after considering the

ratio of **State of Punjab vs. Balbir Singh, 1994(1) R.C.R. (Criminal) 736; State of Punjab vs. Baldev Singh, 1993(3) R.C.R. (Criminal) 533** and **State of H.P. vs. Pawan Kumar, 2005(2) R.C.R. (Criminal) 622** has held that when the Investigating Officer on noticing contraband felt the need of invoking Section 50 of the Act and gave offer to the accused, then Principle No.1 as held in para no.25 of **Balbir Singh's** case (supra) would not apply.

[4]. Learned counsel further contended that once notice under Section 50 of the Act was given to the accused, then it was imperative requirement on the part of the officer intending search to comply with requirement of Section 50 of the Act mandatorily.

[5]. Learned counsel also submitted that the ingredients of Section 52-A of the Act were not complied with in terms of mandatory requirement. By making reference to **Gannu and another vs. State of Punjab, 2017(3) R.C.R. (Criminal) 566; Union of India vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858 SC** and **Inspector of Police, Narcotics Intelligence Bureau vs. Rajangam (2010)15 SCC 369**, learned counsel further contended that the person effecting search or seizure should not have proceeded to investigate the offence at a later stage being a complainant and non-compliance of

Section 52-A of the Act has violated the principles of fair and impartial investigation, which otherwise should have been adhered to by the prosecution.

[6]. Having considered the prosecution story in the light of aforesaid requirement and precedents, I find that the issues are debatable in respect of factual matrix of the case involved. Concededly, petitioner is not involved in any other case. It would be debatable as to the complicity of the petitioner viz-a-viz. requirements of law.

[7]. At this stage, without adverting to the merits of the case and keeping in view the stringent provisions of the NDPS Act, I deem it appropriate to grant concession of regular bail to the petitioner, who is in custody since 15.06.2017.

[8]. In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing heavy bail bonds/surety bonds to the satisfaction of the trial Court.

[9]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

February 23, 2018

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No