

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34867-2018

Date of decision: 06.09.2018

Buta Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.45 dated 18.04.2017 under Section 22 of NDPS Act, registered at Police Station Sadar Tarn Taran, District Tarn Taran.

Learned counsel for the petitioner submits that as per allegations in the FIR, the police party had seen the petitioner coming from the side of a bridge and on seeing the police party, the petitioner tried to throw away the polythene bag, by taking out from front right pocket of the shirt, upon which ASI Balwinder Singh nabbed him with the help of his companion. After the petitioner disclosed his name, his personal search was conducted without giving any offer under Section 50 of the NDPS Act. Counsel for the petitioner laid much emphasis on the fact that in the FIR, there is no mention that prior to conducting the personal search, any notice under Section 50 of the NDPS Act

was served on the petitioner and further relies upon the personal search memo (Annexure P-2), wherein no such reference is given.

Learned State counsel, on instructions from ASI Lakhwinder Singh, has not disputed the fact that during the investigation, no notice under Section 50 of the NDPS Act was given to the petitioner. Learned State counsel has filed the custody certificate and as per this custody certificate, the petitioner is in judicial custody since 08.05.2018 and is not involved in any other case.

Without commenting anything further on merits of the case, considering the fact that the petitioner is in judicial custody for the last more than 05 months; 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 compliance of Section 50 of NDPS Act was made in the case or not, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

06.09.2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No