

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

**CRM-32933-2018 IN/AND
CRM-M-39068 of 2018
Date of Decision: 21.09.2018**

Feroze Din

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.N. Ganeriwala, Advocate
for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

SURINDER GUPTA, J.(Oral)

CRM-32933-2018

This is an application to place on record the amended petition rectifying the sections under which the bail has been sought.

Application is allowed and amended petition is taken on record.

CRM-M-39068-2018

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.73 dated 22.11.2017 registered for offences punishable under Sections 21/22/25 of Narcotic Drugs and Psychotropic Substances Act, at Police Station Mehal Kalan, District Barnala.

Heard.

The petitioner was arrested in this case on 22.11.2017 and recovery of 2100 tablets, which were later on found to be that of 'Alprazolam' was effected from his possession.

Learned counsel for the petitioner has sought regular bail for

the petitioner on the ground, firstly, because of non-compliance of provisions of Section 50 NDPS Act. He has argued that search of petitioner was not conducted before a Magistrate or a gazetted officer; and secondly, by pointing out the memos prepared at the spot which find FIR number mentioned therein. He has argued that mentioning of FIR number in the memos prepared at the spot shows that these were prepared after registration of FIR.

Firstly, I take submission of learned counsel for the petitioner regarding non-compliance of provisions of Section 50 NDPS Act. Copy of consent memo supplied by learned counsel for the petitioner shows that before effecting recovery option was given to the petitioner to get his search conducted before the Magistrate or a gazetted officer. He was also apprised of his legal right to this effect but he opted to get his search conducted from ASI Gurbachan Singh. It will be a matter to be seen during trial as to whether option given by the investigating officer is in compliance of provisions of Section 50 NDPS Act? *Prima facie* it is made out that compliance of Section 50 NDPS Act was made.

Learned counsel for the petitioner has argued that in the recovery memo, personal search memo, site plan and arrest memo, FIR number has been mentioned while these documents were prepared before the FIR was registered.

The above contention of learned counsel for the petitioner has no merit as all the above memos, copies of which have been placed on file are typed copies but the FIR number has been filled in blank place with hand. This *prima facie* shows that FIR number was not the part of those memos when the print was taken out. The FIR number appears to have been

incorporated at later stage and this fact can be got clarified from the investigating officer. However, at this stage, it is not a relevant fact for grant of regular bail to the petitioner.

Learned counsel for the petitioner has drawn my attention towards order 13.07.2017 passed by me in CRM-M-13144-2017, wherein offer given to the accused to get himself searched before gazetted officer, Illaqa Magistrate or by the investigating officer was found bad in the eyes of law. In this case investigating officer has not given offer to accused that he can get his search conducted by him. The offer was confined to apprising him of his right to get himself searched before a Magistrate or a gazetted officer, as such, observations in order dated 13.07.2017 passed in CRM-M-13144-2017 are of no help to the petitioner.

Recovery from the petitioner is of commercial quantity and as per provisions of Section 37 NDPS Act, I find no reason to extend the benefit of regular bail to him.

This petition has no merit and the same is dismissed.

September 21, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No