

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

CRM-M-41117-2018

Date of decision: December 19, 2018

Rajni @ Rosy

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. C.L. Pawar, Senior DAG, Punjab.

RAJ SHEKHAR ATTRI, J.(ORAL)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to petitioner-Rajni @ Rosy in case FIR No.262 dated 22.12.2017 registered for the offences punishable under Sections 15, 18, 21, 29, 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') at Police Station Cantonment, Amritsar City, District Amritsar.

It has been submitted that there is complete violation of Section 50 of the Act.

Undisputedly, the prosecution prepared a memo of non consent (Annexure P-5) at the time of arrest of the petitioner which read as under:-

“In front of the witnesses mentioned below I SI Prabhjit Singh along with colleague employees in their presence, asked accused Rajni @ Rosy wife of Tarsem Singh caste Majbi Sikh r/o House No.1515/12, Dhobi Ghat Gawal Mandi, Amritsar while introducing myself that I am SI Prabhjit Singh No.48/ASR posted in STF Border Range, Amritsar wearing the uniform having the name plate affixed thereupon and I want to conduct your search.

I have information of there being intoxicating substance with you. However, you have legal right to get your search from me or some other gazetted officer or some magistrate who can be arranged by me. At this accused Rajni @ Rosy aforestated said that I have no faith on you.”

On bare perusal of the above, it is very much clear that the petitioner reposed no confidence upon the investigating officer and she never opted to be searched before a magistrate or a gazetted officer.

In the peculiar facts and circumstances of the case, when she did not opted to be searched before a magistrate or a gazetted officer, she should be asked or should be taken before the magistrate but instead of doing so, the investigating officer *suo motu* called Sh. Bal Kishan Singla, DSP STF Border Range ASR, who has given a partial offer to conduct search in his presence but no offer was given to be searched before the gazetted officer or before the magistrate. In view of the law laid down by the Hon'ble Supreme Court in a case titled as *State of Kerala Vs. Raneef-AIR 2011 SC 340*, has made following observations:-

“(4) In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is [Article 21](#) of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail.”

The Hon'ble Supreme Court in *Mohan Lal Vs. State of Punjab in Criminal Appeal No.1880 of 2011*, has categorically held as under:-

“It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”

The Hon'ble Supreme Court in *State of Punjab Vs. Baldev Singh* in AIR 1999 SC 2378 has observed as under:-

*“25. The safeguard or protection to be searched in presence of a Gazetted Officer or a Magistrate has been incorporated in Section 50 to ensure that persons are only searched with a good cause and also with a view to maintain veracity of evidence derived from such search. We have already noticed that severe punishments have been provided under the Act for mere possession of Illicit Drugs and Narcotic Substances. Personal search, more particularly for offences under the Narcotic Drugs And Psychotropic Substances Act, are critical means of obtaining evidence of possession and it is, therefore, necessary that the safeguards provided in Section 50 of the Act are observed scrupulously. The duty to inform the suspect of his right to be searched in presence of a Gazetted Officer or a Magistrate is a necessary sequence for enabling the concerned person to exercise that right under Section 50 because after **Maneka Gandhi v. Union of India, 1978(1) SCC 248**, it is no longer permissible to contend that the right to personal liberty can be curtailed even temporarily, by a procedure which is not "reasonable, fair and just" and when a statute itself provides for a 'just' procedure, it must be honoured. Conducting a search under Section 50, without intimating to the suspect that he has a right to be searched before a Gazetted Officer or a Magistrate, would be violative of the 'reasonable, fair and just procedure' and the safeguard contained in Section 50 would be rendered illusory, otiose and meaningless. Procedure based on systematic and unconscionable violation of law by the officials responsible for the enforcement of law, cannot be considered to be 'fair', just or*

reasonable procedure. We are not persuaded to agree that reading into Section 50, the existence of a duty on the part of the empowered officer, to intimate to the suspect, about the existence of his right to be searched in presence of a Gazetted Officer or a Magistrate, if he so requires, would place any premium on ignorance of law. The argument loses sight of a clear distinction between ignorance of the law and ignorance of the right to a 'reasonable, fair and just procedure.'"

The said observations have also been reiterated by another Constitution Bench of the Hon'ble Supreme Court in *Vijaysinh Chandubha Jadeja Vs. State of Gujarat-AIR 2011(SC) 77*.

In this view of the matter, non-compliance of Section 50 of the Act has vitiated the search proceedings which will certainly affect the rights of the petitioner. She also being a lady was entitled that she be searched before a gazetted officer who should be a female.

Keeping in view the facts and circumstances of the case, without expressing any opinion on merits of the case and the fact that conclusion of trial will take considerably a long time, no useful purpose would be served by detaining the petitioner behind the bars, therefore, the present petition is allowed. Petitioner is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of trial Court/Chief Judicial Magistrate/Duty Magistrate, concerned subject to following terms:-

- (a) The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- (b) In the event of her absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial court shall be competent to cancel her bail bond and surety bond and proceed to procure her

presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.

- (c) She shall not leave the country without the previous permission of the court.

(RAJ SHEKHAR ATTRI)
JUDGE

December 19, 2018
m. sharma

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