

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CRM-M-44627-2018
Date of decision: 31.10.2018**

Sahib Singh @ Saba

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 34 dated 06.02.2018, registered under Section 21 of the Narcotic Drugs & Psychotropic Substances Act at Police Station City Tarn Taran, District Tarn Taran.

Learned counsel for the petitioner submits that as per the allegations in the FIR, on receiving a secret information that three persons, namely Hardeep Singh, Sahib Singh and Gurjant Singh, are involved in extortion and smuggling of intoxicant substances and are coming on a motorcycle, the police party laid a barrier and on seeking three persons coming on a motorcycle, they were apprehended and the first person disclosed his name as Sahib Singh @ Sahiba (petitioner), the second person as Gurjant Singh and the third person as Hardeep Kumar.

Learned counsel for the petitioner further submits that a joint notice under Section 50 of the NDPS Act was served upon Sahib Singh and

Gurjant Singh, in which it was stated that they have a right to be searched either before the Investigating Officer or before a Gazetted Officer or before a Magistrate and thereafter, the Investigating Officer prepared a joint consent memo in which, both, Sahib Singh and Gurjant Singh, appended their signatures and stated that they intend to be searched before a Gazetted Officer. Thereafter, Ashwani Kumar, DSP(D), Tarn Taran was called at the spot.

Learned counsel for the petitioner further submits that as per the FIR, when DSP reached at the spot, he did not give a fresh notice under Section 50 of the NDPS Act and only informed the accused persons that he is a Gazetted Officer and he will search both the said persons.

Learned counsel for the petitioner further submits that the offer made by the Investigating Officer as well as DSP, who had come at the spot, is not as per the procedure prescribed under Section 50 of the NDPS Act and relies upon. 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.

Learned State counsel, on instructions from HC Sarbjit Singh, with regard to a query about the status of third person, who was apprehended at the spot i.e Hardeep Kumar, has informed that he was

booked in a different FIR and search of this person was not effected at the spot.

I have heard learned counsel for the parties.

Without commenting anything on merits of the case and considering the fact that the petitioner is in judicial custody since 06.02.2018 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. ***Parmanand'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/Illaqa 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.

October 31, 2018

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No