

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

**CRM-M-50050-2018
Date of decision: 21.11.2018**

Manjeet @ Bachhiya

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sushil Sheoran, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

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. 309 dated 14.08.2018, registered under Section 20 of the NDPS Act (Section 27-A of the NDPS Act added later on) at Police Station Badhra, District Charkhi Dadri.

Learned counsel for the petitioner submits that as per the allegations in the FIR, on receiving a secret information that three persons, namely Satish, Sandeep @ Nippo and Manjeet @ Bachhiya, are coming on a motorcycle carrying contraband, the police party laid a *Nakabandi* and stopped the motorcycle on which the accused persons were coming.

It is further submitted that the secret information was never recorded in writing for registration of the FIR in this regard. Learned counsel for the petitioner further submits that in the FIR, it is further stated that after all the three persons were apprehended by the police and their names were disclosed, the Inspector/Investigating Officer obtained their

joint consent and thereafter, he called the DSP at the spot.

Learned counsel for the petitioner relies upon the judgment rendered in “*State of Rajasthan vs Parmanand and another*”, 2014(2) *RCR (Criminal)* 40, wherein, 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 counsel for the petitioner further submits that in the FIR, it has come that after the recovery was effected from co-accused Sandeep @ Nippo, a parcel was prepared and sealed by putting five seals namely 'TS' and after using the seal, the same was destroyed and was not kept in safe custody, hence, again the proper procedure has not been followed.

Learned counsel for the petitioner further submits that petitioner is not involved in any other case under the NDPS Act.

Learned State counsel, on instructions from ASI Harinder Singh, submits that though the petitioner is not involved in any other case under the NDPS Act, however, he is involved in three other FIRs in other offences in which he is on bail. It is further submitted that investigation is complete and challan stands presented and eleven prosecution witnesses are yet to be examined.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that secret information was not recorded in writing and was not sent to police station for registration of the FIR, a joint notice was given to the accused persons; seal was destroyed after use and also in view of the fact that conclusion of the trial is likely to take some time; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

November 21, 2018

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No