

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

**Criminal Misc. No. M-5295 of 2018
Date of decision: 04.07.2018**

Ramesh Kumar @ Meshi

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Charanpreet Singh, Advocate for
Mr. B.S. Kathuria, Advocate
for the petitioner.

Mr. Rahul Rathore, DAG, Punjab
for the respondent -State.

Daya Chaudhary, J. (Oral)

The present one is the second petition filed under Section 439 Cr.P.C. on behalf of petitioner-Ramesh Kumar @ Meshi for grant of regular bail in case FIR No.225 dated 26.05.2015 registered under Section 21/61/85 of the Narcotic Drugs and Psychotropic Substances Act at Police Station Phagwara City, District Kapurthala.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case whereas he has played no role. The petitioner has been implicated in the case on the basis of suspicion. The alleged recovery of 250 gms of intoxicating powder has been stated to be recovered from him. Learned counsel further submits that there is non-compliance of provisions of Section 52(A) of the NDPS Act as samples were supposed to be taken before the Magistrate whereas in the present case, the police party has done the sampling at the spot of recovery. There is non-compliance of provisions of Section 50 of the NDPS Act also. Learned

counsel also submits that the petitioner was apprehended at the spot by five police officials but he was not taken before the nearest Gazetted Officer or the Magistrate. The alleged recovery of 250 gms of intoxicating powder was detected to be *Alprazolam*, which is a psychotropic substance and is covered under Section 22 of the NDPS Act. The charges have been framed by the trial Court under Section 21 of the NDPS Act. Learned counsel also submits that the petitioner is entitled for grant of regular bail only on this ground. The petitioner was granted interim bail by the trial Court due to non-receipt of the FSL report with the condition that he shall surrender before the trial Court on receiving the FSL report and thereafter, he surrendered, which shows the *bonafide* conduct of the petitioner. No other case under NDPS Act is pending against the petitioner. The petitioner is in custody for the last 1½ years and no purpose would be served by keeping him in custody. All witnesses are official witnesses and there is no possibility that the petitioner may influence the official witnesses. Learned counsel for the petitioner has also relied upon judgments rendered by Hon'ble the Supreme Court in *State of Rajasthan vs. Parmanand and another*, 2014(2) RCR (Criminal) 40, *Gurjant Singh @ Janta vs. State of Punjab*, 2013 (4) RCR (Criminal) 874 as well as judgments rendered by this Court in *Balinder Singh vs. State of Haryana*, 2015(1) RCR (Criminal) 972, *Gurpreet Singh @ Gopi vs. State of Punjab*, Criminal Misc. No. M-11968 of 2017 decided on 30.05.2017, *Jagroop Singh @ JP vs. State of Punjab*, Criminal Misc. No. M-3895 of 2017 decided on 17.03.2017, *Gurjant Singh vs. State of Punjab*, Criminal Misc. No. M-30224 of 2017 decided on 30.08.2017, *Sikandar @ Bodha vs. UT of Chandigarh*, Criminal Misc. No. M-15497 of 2017 decided on

18.09.2017 in support of his contentions.

Learned State counsel has not disputed the custody period and also the fact that no other case is pending against the petitioner. However, learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that in case, the recovery is from the accused but from the car, the provisions of Section 50 of the NDPS Act would not be applicable. In case of chance recovery, it is not necessary for the Police Officers/Officials to comply with the provisions of Section 50 of the NDPS Act.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the contents of the FIR and other documents available on the file.

In the present case, the recovery is 250 gms of intoxicating powder, which was found to be *Alprazolam* in FSL report, which is covered under Section 22 of the NDPS Act and charges have been framed under Section 21 of the NDPS Act, which is also debatable but it would be considered at the time of trial. It is also not disputed that the petitioner was released on interim bail by the trial Court due to non receipt of the FSL report with the condition to surrender before the trial Court on receipt of FSL report. It has also been submitted by learned counsel for the petitioner that at the time of alleged recovery, the Police party was in private vehicle and because of that reason, registration number of the vehicle has not been mentioned. Even it is not mentioned as to who was driving the vehicle. A detailed order was passed by this Court in Criminal Misc. No.30579-M of 2003 by observing that Director General of Police, Punjab is directed to

issue direction to all the subordinates not to use the private vehicle without requisition in future and an affidavit was also filed by the Director General of Police, Punjab before this Court. There is non-compliance of provisions of Section 50 of the NDPS Act. Each accused has a right to be informed that he has a right to be searched before the nearest Gazetted Officer or the Magistrate. A joint communication of the right available under Section 50 (1) of the NDPS Act to the accused would frustrate the very purpose of Section 50 of the Act. In the present case, that right has not been properly communicated.

It is also settled position of law that before recovery, the Investigating Officer is required to inform the accused that he can be searched before the nearest Gazetted Officer or the Magistrate but in the present case, the search was made by the Police officials, which is non-compliance of Section 50 of the NDPS Act. There is non-compliance of Section 42 of the NDPS Act also. Moreover, the petitioner is in custody for the last 1 ½ years and all official witnesses remains to be examined. There is no possibility that the petitioner may influence the official witnesses.

In view of the facts and law position as discussed above, the present petition is allowed and the petitioner (Ramesh Kumar @ Meshi) is directed to be released on regular bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court.

04.07.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No