

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

1. CRM-M-28129-2018

Moti Yadav

...Petitioner

Versus

State of Haryana

...Respondent

2. CRM-M-7166-2018

Arun Kumar

...Petitioner

Versus

State of Haryana

...Respondent

Date of decision: 07.12.2018

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. D. S. Virk, Advocate
for the petitioner in CRM-M-28129-2018.

Mr. Dhawaljeet Dutta, Advocate
for the petitioner in CRM-M-7166-2018.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above noted two petitions
as they arise out of the same FIR.

These petitions have been filed under Section 439 of the Code
of Criminal Procedure for grant of regular bail to petitioners Moti Yadav
and Arun Kumar in case FIR No. 7 dated 09.01.2017, registered under
Section 17/61/85 of the NDPS Act at Police Station Sadar Sirsa, District

Sirsa.

Learned counsel for the petitioners submit that petitioners are in judicial custody since 09.01.2017 and the case is still at the stage of recording of the prosecution evidence.

Learned counsel for the petitioners have referred to the allegations in the FIR to submit that when both the petitioners, along with co-accused Mukesh Yadav (declared juvenile), were apprehended, they were given notice under Section 50 of the NDPS Act to be searched either before a Gazetted Officer or before a Magistrate and a joint reply was obtained from them that they want to be searched in the presence of a Gazetted Officer.

It is further submitted that in 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 counsel for the petitioners further submit that co-accused Mukesh Yadav, who was declared juvenile, has already been granted concession of regular bail by the Juvenile Justice Board.

Learned State counsel, on instructions from SI Dharambir Singh and on the basis of the custody certificate dated 06.09.2018, has not disputed that the petitioners are in judicial custody since 09.01.2017 and the

case is still at the stage of recording prosecution evidence. It is also not disputed that in pursuance to the notice given under Section 50 of the NDPS Act, a joint consent memo from the petitioners and co-accused Mukesh Yadav was taken.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the facts that the petitioners are in judicial custody since 09.01.2017 and despite having lapsed a period of about 01 year and 11 months, the case is still at the stage of recording prosecution evidence; co-accused Mukesh Yadav, who was declared juvenile, has already been granted concession of regular bail by the Juvenile Justice Board and also in view of the fact that a joint consent memo from the petitioners and co-accused Mukesh Yadav was taken, the instant petitions are allowed. Petitioners Moti Yadav and Arun Kumar are ordered to be released on regular bail on their furnishing bail and two local sureties to the satisfaction of the trial Court/Illaq Magistrate concerned.

A photocopy of this order be placed on the file of other connected case.

December 07, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No