

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-9848-2018 (O&M)

Date of Decision: 18.4.2018

Rakesh Kumar

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Deepak Bhardwaj, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure (for short, "Cr.P.C.") for grant of regular bail to the petitioner in case FIR No.52 dated 5.5.2017 registered for the offences punishable under Sections 22 of Narcotic Drugs & Psychotropic Substances Act (for short, "NDPS") at Police Station Lahori Gate, Patiala.

Heard.

Learned counsel for the petitioner submits that as per prosecution story, from the personal search of the petitioner, 1000 intoxicated tablets were recovered. He placed reliance on the judgment of Hon'ble Supreme Court in **State of Rajasthan v. Parmanand and another;** 2014 AIR (SC) 1384 with regard to violation of Section 50 of NDPS Act. In the case in hand, a limited consent was given vide Annexure P-2 which is reproduced hereunder : -

"I ASI, in front of below mentioned witnesses, told accused

RakeshKumar while disclosing my identity to him that I am

ASI Hardip Singh and I am posted at police station Lahori Gate, Patiala. I have a suspicion that some narcotic substance is present with you or in the car in your possession and I want to search you and your car but you have a legal right that you can get yourself and your car searched from the Gazetted Officer of Police or Magistrate, who can be called on the spot, who after thinking for a while said, I have full faith upon you and you can search my person and the car in my possession, on which consent memo has been prepared and the signature of Rakesh Kumar above and witnesses are being taken on memo.”

In view of the judgment of Hon'ble Supreme Court in Parmanand's case (supra), the accused must be apprised of his right of search before the Gazetted Officer but in the case in hand, he was apprised of his limited right such as before Police Gazetted Officer. To the mind of this Court, there is a violation of Section 50 of NDPS Act.

Without expressing any opinion on merits of the case and keeping in view the fact that conclusion of trial will take considerably long time, the present petition is allowed. Petitioner-Rakesh Kumar son of Des Raj is ordered to be released on regular bail subject to the conditions, if any, and on furnishing bail bond and surety bond to the satisfaction of the concerned trial Court/Chief Judicial Magistrate/Duty Magistrate 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 his 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 his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.

- (c) He shall not leave the country without the previous permission of the Court.

April 18, 2018

Paritosh Kumar

**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No