

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-9944-2018

Date of decision : 14.03.2018

Parshan Singh

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vivek Salathia, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab.

AMOL RATTAN SINGH, J.(ORAL)

Learned counsel for the petitioner points out that the alleged recovery of intoxicant powder was made by the police party by taking a polythene bag stated by the police to have been carried by the petitioner in his hand, from which 105 grams of intoxicant powder was alleged to have been recovered.

He submits that the aforesaid manner of recovery, without even an offer of producing the petitioner before a gazetted officer or a Magistrate, results in a violation of Section 50 of the NDPS Act even as per the judgment of the Constitution Bench in ***Vijaysinh Chandubha Jadeja vs. State of Gujarat (2011) 1 SCC 609*** (reference paragraphs 29, 30, 31, 32).

He further submits that the petitioner has already been in custody for more than 7 months and 21 days, with only one prosecution witness examined out of eleven, and therefore the trial not likely to

Learned State counsel submits that it being a chance recovery, the judgment in Jadejas' case would not apply and it would be the ratio of subsequent judgments in *Dilbagh Singh Vs. State of Punjab, 2017(1) RCR (Criminal) 88* and *State of H.P. vs. Sunil Kumar, 2014(2) Law Herald (SC), 1627* that would apply, and therefore the petitioner is not entitled to concession of bail.

Having considered the above and the fact that in the Constitution Bench' judgment it has been held that an attempt should be made by the police officer to actually produce the accused before a Magistrate to lend authenticity to the proceedings, with not even an attempt having been made in this case to apprise him of his right, also seeing the fact that the petitioner has been in custody for almost 8 months now with the trial nowhere near conclusion, I consider it appropriate to admit the petitioner to bail, upon his furnishing bail bonds and surety bonds to the satisfaction of the learned trial Court.

However, the trial Court would decide the case on the merits of the evidence led before it, as per law.

Ordered accordingly.

(AMOL RATTAN SINGH)
JUDGE

March 14, 2018.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No