

CRM-M-3169-2019

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

CRM-M-3169-2019

Date of Decision: 29.01.2019

Varinder Singh @ Nikka

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. M.K.Dogra, Advocate,
for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

INDERJIT SINGH, J. (Oral)

Petitioner has filed this petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.142 dated 02.09.2015, registered at Police Station C-Division, Amritsar, under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act').

Notice of motion has been issued. Learned State counsel has appeared and contested the instant petition.

I have heard learned counsel for the petitioner as well as learned State counsel and gone through the record.

From the record, I find that 150 grams of intoxicant powder containing the salt of Diphenoxylate Hydrochloride was recovered from the pocket of trouser of the petitioner. Perusal of FIR, itself, shows that provisions of Section 50 of the NDPS Act have not been complied with.

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The provisions of Section 50 of the NDPS Act are mandatory to be complied with, but no offer has been given to the accused regarding his search from the Gazetted Officer or Magistrate etc., rather the search was conducted directly. It is mentioned in the FIR that the Investigating Officer had tried to join some independent witness before the search which means that the Investigating Officer was suspecting that there was some incriminating article with the petitioner and co-accused.

Moreover, the petitioner has been in custody. He is not required for any investigation or interrogation purposes as he is in judicial custody. The trial of case may take a long time. No useful purpose will be served by keeping the petitioner in custody till the final disposal of the case.

Keeping in view the facts and circumstances of the present case especially the fact that mandatory provisions of Section 50 of the NDPS Act before making the search have not been complied with; without discussing the facts in minute detail and without expressing any opinion on the merits of the case, this criminal miscellaneous petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal bonds in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial Court/Duty Magistrate.

However, nothing stated above shall constitute my opinion on merits of the case.

29.01.2019

parveen kumar

Whether speaking/reasoned

Whether reportable

:

:

(INDERJIT SINGH)

JUDGE

Yes

No