

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.3531 of 2019
Decided on: 08.03.2019

Rohit Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Mamli, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.493 dated 31.08.2018, for offence punishable under Sections 22-C of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and 18-C, 18-A of the Drugs and Cosmetics Act, 1940, registered at Police Station City Fatehabad, District Fatehabad.

Counsel for the petitioner has submitted that as per the offer given under Section 50 of the NDPS Act, it is stated that the petitioner has a right to be searched before the Police Gazetted Officer or the Magistrate whereas ***the requirement under Section 50 of the NDPS Act is to be searched before a Gazetted Officer or a Magistrate.***

It is further submitted that after the consent of the petitioner was recorded, a Police Gazetted Officer was called and again no second

offer was given by the Gazetted Officer that the petitioner has still a right to be searched before any other Gazetted Officer or a Magistrate. It is further argued that the petitioner is on bail in another FIR and he is in custody since 31.08.2018. It is also submitted that the challan stands presented on 02.03.2019 and it will take long time in conclusion of the trial.

Counsel for the State, on the basis of the Custody Certificate and on instructions from ASI Rishal Singh, has not disputed the factual position.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 31.08.2018; conclusion of the trial is likely to take some time and also considering the fact that it is to be decided during the course of trial, whether the recovery effected from the petitioner on the basis of the notice under Section 50 of the NDPS Act, was a legal recovery or not, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

08.03.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No