

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6554-2019

Date of Decision: 25.02.2019

Bobby Kumar @ Bobby

.. Petitioner

Vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Vishva Bahl, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

...

Inderjit Singh, J. (Oral)

Petitioner Bobby Kumar @ Bobby 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 NDPS Act, 1985.

Notice of motion has been issued.

Learned State counsel 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.

As per the prosecution version, the present petitioner was the pillion rider on the motor cycle driven by Varinder Singh @ Nikka. 150 grams of intoxicant powder containing the salt of Diphenoxylate Hydrochloride was recovered from the possession of co-accused Varinder Singh @ Nikka and 100 grams of said intoxicant powder was recovered from the left pocket of trouser of the present petitioner. Perusal of the FIR, itself, shows that provisions of Section 50 of the NDPS Act have not been

complied with. No offer has been given to the accused whether he wants to get himself searched from the Gazetted officer or Magistrate etc. 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, but even then the search was conducted directly. The provisions of Section 50 of the NDPS Act are mandatory in nature. In the present case, the Investigating Officer has not complied with those mandatory provisions.

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 the case may take long time. No useful purpose will be served by keeping him in custody till the final disposal of the case.

Keeping in view the facts and circumstances of the present case; 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, it is made clear that any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

25.02.2019
Jasmine Kaur

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No