

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

**CRM-M-21906-2019
Date of decision: 02.08.2019**

Sukhdev Singh @ Sukha Dhanjal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- None.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 112 dated 25.07.2018, registered under Section 22-61-85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Badhnikalan, Moga.

Since the Bar has abstained from work today, there is no representation on behalf of the parties.

The Superintendent, Central Jail, Faridkot has sent the custody certificate of the petitioner, as per which, the petitioner is in judicial custody for the last one year and six days and he is on bail in another FIR.

A perusal of the FIR shows that while conducting the search, a joint notice was given to petitioner Sukhdev Singh @ Sukha Dhanjal as well as co-accused Veer Singh @ Krishan Singh and thereafter, the recovery of 60 tablets of Alprazolam and 360 grams of intoxicant powder was effected from both the accused.

In “*State of Rajasthan vs Parmanand and another*”, 2014(2)

RCR (Criminal) 40, it has been held by the Hon'ble Supreme Court that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case clear, unambiguous and individual offer is not given to the accused person. It is further held that joint communication of a right may not be clear or unequivocal as it may create confusion and may result in diluting the right.

A perusal of the record further shows that co-accused Veer Singh @ Krishan Singh has already been granted concession of regular bail, vide order dated 28.02.2019 passed in CRM-M-8304-2019. The operative part of the order reads as under:

“Counsel for the petitioner has submitted that as per the allegations in the FIR, the police party headed by Inspector Surjit Singh, Investigating Officer, apprehended the petitioner along with other person namely, Sukhdev Singh @ Sukha on suspicion that they are carrying some narcotic contraband and thereafter, he has give a notice under Section 50 of the NDPS Act to be searched before the Gazetted Officer or the Magistrate. Counsel for the petitioner has further submitted that in reply to the notice, a joint consent memo was prepared of the petitioner as well as his co-accused namely Sukhdev Singh @ Sukha and therefore, it will be a debatable issue to be decided during the course of trial whether proper procedure was followed by the Investigating Officer or not.

Counsel for the petitioner has also submitted that the petitioner is not facing trial in any other case under the NDPS Act and conclusion of the trial is likely to take some time.

Counsel for the State, on instructions from ASI

Nishan Singh, has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is not facing trial in any other case under the NDPS, Act and conclusion of the trial is likely to take some time, 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.”

Therefore, without commenting upon the merits of the case, considering the aforesaid facts, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

02.08.2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No