

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 219

Criminal Miscellaneous No.M-24592 of (O & M)
Date of Decision: *September 03, 2019*

Gurpreet Singh @ Rangu

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

. . .

PRESENT: - Mr. S.P.S. Aulakh, Advocate, for the petitioner.

Mr. A.P.S. Gill, Deputy Advocate General, Punjab.

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Amol Rattan Singh, J

Learned counsel for the petitioner relies upon a judgment of the Supreme Court in Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018(2) RCR (Criminal) 931, to submit that with the search of the petitioner having been conducted with no gazetted officer or Magistrate present, there is a violation of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'). He further submits that there is no other criminal case registered against the petitioner.

Learned State counsel submits that an offer having been made to the petitioner even as per the FIR and he having consented to be

searched by the apprehending officer, that would be sufficient compliance of the aforesaid provision. In Arif Khan's case (supra), it was held as follows:-

“..... Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer.”

That being so, without making any comment on the actual merits of the case or against the petitioner, the petition is allowed. The petitioner is ordered to be released on bail, upon his furnishing bail bonds and surety bonds to the satisfaction of the trial court.

September 03, 2019

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(Amol Rattan Singh)
Judge

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No