

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

**CRM-M No.53941 of 2018
Decided on: 12.07.2019**

Gurwinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Jagmohan Ghumman, DAG, Punjab.

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.213 dated 08.09.2018 , for offence punishable under Section 18 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Samrala, District Khanna, Ludhiana.

Counsel for the petitioner has submitted that the petitioner is in custody since 10.09.2018 and the charges were framed on 01.03.2019, however, no witness of the prosecution has been examined, though 16 Pws have been cited in the challan. It is further submitted that as per the allegations in the FIR, when ASI Tarwinder Singh stopped a car bearing registration No.PB46-R-3166, 02 persons were sitting in the car i.e. the petitioner – Gurwinder Singh and the driver Harjit Singh @ Jeet. On suspicion, they were served a joint notice

under Section 50 of the NDPS Act and thereafter, the Deputy Superintendent of Police (D) Jagwinder Singh was called at the spot and even, he has also given a joint notice to the accused. Counsel for the petitioner has relied upon the non-consent as well as the consent memo (Annexures P-3 and P-4), in support of this version and has relied upon the judgment ***“State of Rajasthan vs Parmanand and another”, 2014(2) RCR (Criminal) 40***, wherein, 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.

Counsel for the State, on instructions from ASI Mahinder Singh, has not disputed the factual position but opposed the prayer for bail. Counsel for the State has submitted that the petitioner is not a habitual offender and he is not involved in any other case as per the Custody Certificate dated 11.12.2018. It is also not disputed that no PW has been examined before the trial Court, so far.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 10.09.2018; a joint notice under Section 50 of the NDPS Act was served upon both the accused (including the petitioner) by the Investigating Officer as well as by the DSP(D); no witness of the prosecution has been examined so far and the conclusion of the trial will 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/Illaqa 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

12.07.2019
yakub

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