

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

**CRM-M-30926-2019
Date of decision: 16.08.2019**

Harjit Singh alias Jit

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. Jagmohan Ghuman, DAG, Punjab.

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. 213 dated 08.09.2018, under Section 18 of the NDPS Act, registered at Police Station Samrala, District Khanna, Ludhiana.

On 26.07.2019, while the granting interim bail to the petitioner, the following order was passed:

“.....As per the allegations in the FIR, the police party, headed by ASI Tarwinder Singh, stopped a car bearing registration number PB-46-R-3166, which was being driven by petitioner Harjit Singh @ Jit and one Gurwinder Singh was the co-passenger. The Investigating Officer gave them an option to be searched either before a Gazetted Officer or before a Magistrate and in reply to the said notice, a non-consent memo was recorded which was jointly signed by both the accused persons. Vide this non-consent memo, the petitioner and coaccused opted to be searched before a Gazetted Officer. Thereafter, DSP (D) Jaswinder Singh was called

at the spot and even recorded a joint consent memo of both the accused persons. Thereafter, beneath the seat of the car, 2.5 kg. of opium was recovered and from co-accused Gurwinder Singh, who was carrying a plastic bag, 2 kg. of opium was recovered.

On the face of it, the procedure adopted by the Investigating Officer and surprisingly even by the DSP, while recording the joint non-consent memo as well as consent memo, is not correct in view of the judgment rendered by Hon'ble Supreme Court in "State of Rajasthan vs Parmanand and another", 2014(2) RCR (Criminal) 40, wherein it has been held 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.

List again on 16.08.2019.

In the meantime, the petitioner is directed to be released on interim bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, concerned.

The Director, Bureau of Investigation, Punjab is directed to file an affidavit about the lapses in the investigation despite various directions issued by this Court from time to time and also the action taken against the erring officers/officials."

In compliance thereof, affidavit of Director, Bureau of Investigation, Punjab is filed in Court today. It is stated in the affidavit that noticing the fact that Investigating Officer ASI Tarwinder Kumar as well as

the Gazetted Officer DSP(D) Jagwinder Singh have prepared a joint consent memo of both the accused persons though at separate time, the Range DIG, Ludhiana has been asked to fix the responsibility upon the aforesaid two Officer/Official and take appropriate departmental action in the matter for the serious lapse in the investigation.

In view of the above, considering the fact that both, Investigating Officer/ASI Tarwinder Kumar as well as Gazetted Officer DSP(D) Jagwinder Singh, have recorded a joint consent memo of the petitioner and his co-accused Gurwinder Singh, the present petition is allowed and order dated 26.07.2019 is made absolute.

16.08.2019*Waseem Ansari***(ARVIND SINGH SANGWAN)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*