

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 221

Criminal Miscellaneous No.M-35663 of 2019
Date of Decision: September 04, 2019

Jaswinder Singh @ Billa

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

. . .

PRESENT: - Mr. G.S. Brar, Advocate, for the petitioner.

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

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Amol Rattan Singh, J (Oral)

Learned counsel for the petitioner points to the order passed by the trial court at the time when the petitioner was granted interim bail by that court, pending receipt of the report from the Chemical Examiner. He submits that despite the facts of the case being the same as they are stated in the FIR, interim bail was granted to him and the only reason for cancellation of bail was that the quantity of intoxicant powder, as was stated to have been found from the seat of the driver, falls 'under commercial quantity'. He however submits that with the petitioner only being a co-passenger, and further, his personal search not having been conducted before a gazetted

the judgment of the Supreme Court in Arif Khan @ Agha Khan Vs. State of Uttarakhand, 2018(2) RCR (Criminal) 931.

Learned State counsel submits that the petitioner having signed a consent memo that he did not wish to be searched in presence of a gazetted officer, the judgment cannot apply.

However, it is to be noticed that it has been stated in the aforesaid judgment 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 gazette officer.”

That being so, without making any comment on the actual merits of the case for 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 04, 2019

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**(Amol Rattan Singh)
Judge**

Whether Speaking/ Reasoned:

Yes/ No

Whether Reportable:

Yes/ No