

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-39531-2019

Date of decision: 20.09.2019

Manoj

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.170 dated 26.04.2019 under Sections 411, 420, 467, 468, 471 IPC and Section 20 of NDPS Act, registered at Police Station Ganaur, District Sonapat.

Learned counsel for the petitioner submits that as per allegations in the FIR, Investigating Officer/Inspector Satish got a secret information that the petitioner is used to sell intoxicant contraband and is roaming on the G.T. Road for selling the same to some dhaba owner. Thereafter, the petitioner was apprehended along with a car and he was given a notice under Section 50 of NDPS Act, in which an option was given that he has a right to be searched before a Magistrate, a Gazetted Officer or some higher police officer. Consent of the petitioner was also recorded that he wants his search to be conducted by some senior police officer. It is further submitted that neither the notice under Section 50 of NDPS Act nor the consent was recorded in accordance with the

provisions under Section 50 of NDPS Act, as there is no provision for giving a third option, which is given in the notice that the petitioner has a right to be searched before some senior police officer and even in the consent memo, the petitioner has stated that he wants to be searched before a senior police officer. The learned counsel also relied upon the judgment of Hon'ble Division Bench of this Court in CRA-D No.452-DB of 2017, **Gurwinder Singh vs State Punjab** where in relying upon the judgment “**State of Rajasthan Vs. Parmanand and another**”, 2014 (2) RCR (Crl.) 40, conviction was set-aside holding that Investigating Officer cannot give third option.

Learned counsel for the petitioner has further submitted that the petitioner is first offender; he is not involved in any other case and is in custody since 30.04.2019; challan has been presented and charges are yet to be framed and it will take some time in conclusion of the trial.

Learned State counsel has filed the custody certificate dated 19.09.2019 in the Court today and on instructions from ASI Satbir and on the basis of notice under Section 50 of NDPS Act and the consent memo, has not disputed the aforesaid factual position.

Without commenting anything on merits of the case, considering the fact that the procedure adopted by the Investigating Officer is defective, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

20.09.2019

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Whether speaking/reasoned

: Yes/No

Whether Reportable

: Yes/No