

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

**Crl. Misc. No.M-46569 of 2019 (O&M)
Date of Decision: November 6, 2019**

Jaswinder Singh @ Kaku

.....PETITIONER(s).

VERSUS

State of Punjab

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.N.Ganeriwala, Advocate
for the petitioner.

SURINDER GUPTA, J.(Oral)

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 34 dated 03.04.2019 registered for the offence punishable under Section 18 of Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Nahianwala, District Bathinda.

Notice of motion.

On asking of the court, Mr. Amitoj Singh Dhaliwal, D.A.G., Punjab, who is present in the Court accepts notice and submits that intimation by Registry informing of fixation of the petition has already been received and record of the case is available with him.

Learned counsel for the petitioner has argued that recovery of 3 kg of opium is alleged to have been effected from the possession of petitioner, when he was arrested on 03.04.2019. Before effecting the recovery, compliance of provisions of Section 50 of NDPS Act was not duly

made, as the option given by the Investigating Officer to the petitioner was to get his search conducted before any police Gazetted officer, or Magistrate or any Gazetted officer, which is not as per the spirit of provisions of Section 50 of NDPS Act. He has relied the observations in the case of ***Gurwinder Singh Versus State of Punjab*** of this Court reported as ***2019(2) R.C.R. (Criminal), 637.***

It will be an arguable point before the trial Court as to whether the option given to the petitioner before getting his search conducted is in accordance with the provisions of Section 50 of NDPS Act.

Without expressing any opinion on merits of the case, the present petition is allowed. Petitioner Jaswinder Singh @ Kaku is ordered to be released on regular bail on furnishing bail bond and surety bond to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate, subject to following terms:-

- a. The petitioner shall comply with the conditions mentioned in Section 437(3) Cr.P.C.
- b. In the event of his absence on any date of hearing, the benefit of bail allowed to the petitioner shall stand withdrawn. The trial Court shall be competent to cancel his bail bond and surety bond and proceed to procure his presence in accordance with law. In that eventuality the petitioner shall have to apply for bail afresh.
- c. He shall not leave the country without the prior permission of the Court.

November 6, 2019
Jyoti-II

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No