

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-21733-2020 (O&M)

Date of Decision:- 10.11.2020

Avninder Singh @ Shetty

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Ruhani Chadha, Advocate, for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

(Proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner seeks grant of regular bail in respect of a case registered against him vide FIR No.01, dated 1.1.2018, Police Station Division No.2, District Ludhiana, under Sections 22 and 61 of NDPS Act.
2. It is the case of prosecution that on 1.1.2018, the petitioner who was travelling in a Montero vehicle was apprehended by the police and

his search yielded recovery of 500 grams of 'Heroin' from pocket of his jacket.

3. Learned counsel for the petitioner has submitted that it is a case of recovery from personal search of the petitioner but in fact the provisions of Section 50 of NDPS Act have not been complied with in letter and spirit. Learned counsel in order to hammer forth his aforesaid submissions has drawn the attention of this Court to the vernacular of the consent memo annexed with his application as Annexure P-5, a perusal of which would show that an offer has rather been made in a restricted manner inasmuch as while extending the offer to the petitioner to get his search effected from a Gazetted Officer or a Magistrate, it has been qualified as to whether he wishes his search to be effected in the presence of some Gazetted Officer of the "Police Department".
4. Opposing the petitioner, learned State counsel has submitted that the aforesaid contention of the petitioner cannot be accepted inasmuch as no such question was put to Investigating Officer when he was examined before the trial Court. Learned State counsel has however, informed that the petitioner as on date has been behind bars since the last more than 2 years and 10 months.
5. I have considered rival submissions addressed before this Court. Keeping in view the manner in which the offer in terms of Section 50 of NDPS Act has been extended to the petitioner, it would be debatable as to whether the provisions of Sections 50 NDPS Act stand complied with in letter and spirit or not. In any case since the

petitioner has already been behind bars for a substantial period of 2 years and 10 months, further detention of the petitioner will not serve any useful purpose. The petition, as such, is accepted and the petitioner is ordered to be released on bail subject to his furnishing bail bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

6. It is however clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

November 10, 2020

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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No