

CRM-M-27055-2020 (O&M)

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

**CRM-M-27055-2020 (O&M).
Decided on: September 16, 2020.**

Sukhpal

.. Petitioner

VERSUS

State of Haryana

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Amit Choudhary, Advocate,
for the petitioner.**

Mr.Naveen Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

Through Video Conference

The present petition has been filed under Section 439 of the Code of Criminal Procedure, seeking regular bail in FIR No.378 dated 22.9.2018, under Section 22 C (Section 27 A added later on) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, Sadar, Fatehabad, District Fatehabad.

Learned counsel for the petitioner has argued that the petitioner has been wrongly roped in the present case and that the

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allegations of recovery of 1170 tablets of Aplrazolam and 1600 tablets of Tredol against the petitioner are false. He has submitted that the petitioner is in custody since 23.9.2018 i.e. for the last about two years and all the material witnesses have been examined. He has submitted that out of 17 witnesses cited by the prosecution, 14 have been examined and the conclusion of the trial is likely to take long time and therefore, in view of the long incarceration of the petitioner, his case may be considered for his release on bail.

Learned counsel for the petitioner further submits that otherwise also on merits of the case the entire trial is vitiated on the ground that provisions of Section 50 of the NDPS Act, have not been complied with. He has pointed out to the FIR (Annexure P1), from where it can be clearly seen that the offer which was given to the petitioner for conducting search was from “any gazetted Police official” or Magistrate and thereafter, he has been searched by a police officer. He has further submitted that in view of clear violation of Section 50 of the NDPS Act, he may be considered for the grant of bail in the present case.

Learned counsel for the petitioner has pointed out to the judgments passed by Coordinate Benches of this Court in CRM-M-48553-2019, CRM-M-13531-2020, CRM-M-9848-2018, CRM-M-3531-2019, CRM-M-40-2016, CRM-M-21043-2020, CRM-M-24763-2019 and CRM-M-47114-2019, on the point of law that if an offer is given for conducting search by a “Gazetted officer of Police Department” and not by a “Gazetted Officer”, as envisaged under Section 50 of the NDPS Act, then in that

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situation, it is an illegality.

On the other hand, learned State counsel, though has not disputed the custody period of the petitioner i.e. since 23.9.2018 and that out of 17 witnesses cited by the prosecution, 14 have already been examined however, he has opposed the bail on the ground that the alleged recovery was of commercial quantity and therefore, the petitioner is not entitled to bail. He he has further submitted that another case under the NDPS Act is also pending against the petitioner as such, he be not granted the benefit of bail.

I have heard the learned counsel for the petitioner as well as the learned State counsel through video conference.

The custody period of the petitioner of about two years is not in dispute in the present case. It is also not disputed that out of 17 witnesses cited by the prosecution, 14 witnesses have already been examined. So far as another case pending against the petitioner is concerned, the petitioner is already on bail in that case. The recovery in the present case admittedly is of commercial quantity and therefore, it would be hit by the bar contained under Section 37 of the NDPS Act unless the same falls within the exceptions which are contained in Section 37 of the NDPS Act. In the present case offer which was given was with regard to search of the petitioner from a "Gazetted Police Officer" and in view of the provisions of Section 50 of the NDPS Act, it would be debatable whether the trial can be said to be vitiated or not. Learned counsel for the petitioner has relied upon the various judgments of this Court which have been passed by further

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making reliance upon the judgment of Hon'ble the Supreme Court in **Gurjant Singh @ Janta Vs. State of Punjab, 2014 (13) SCC 603**, that provisions of Section 50 of the NDPS Act, need to be complied with fully and not to be treated as an empty formality.

Learned State counsel is not in a position to dispute the factual position with regard to the offer made to the petitioner i.e. search by a “Gazetted Police Officer” and it was not “Gazetted Officer” as enunciated under Section 50 of the NDPS Act.

Be that as it may, the issue is certainly debatable and prima facie, it appears to reasoning that an exception has certainly been carved out to make a departure from the bar which has been created under Section 37 of the NDPS Act.

Consequently, considering the totality of the circumstances, I deem it fit and appropriate to admit the petitioner on bail. The present petition is allowed. It is ordered that the petitioner shall be released on bail on furnishing bail bond/surety bond to the satisfaction of the concerned trial Court/Duty Magistrate.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

September 16, 2020.
raj arora

JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No