

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

CRM-M No.40851 of 2019 (O&M)
DATE OF DECISION: 26.10.2020

Gur Rattan SinghPetitioner

versus

State of PunjabRespondent

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Vaibhav Narang, Advocate for the petitioner

Mr. Ramandeep Sandhu, Senior Deputy Advocate General,
Punjab

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ALKA SARIN, J.:

Heard through video conferencing.

The present petition has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioner in FIR No.97 dated 27.06.2019 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act') registered at Police Station "A" Division, District Police Commissionerate, Amritsar.

Learned counsel for the petitioner has contended that in the present case ASI-Satnam Singh prepared a common non-consent memo for all the accused since they wanted to get the search conducted in the presence of some Gazetted Officer. As such, a common non-consent memo was prepared in this regard on the spot and all the three accused signed the same. A copy of the joint non-consent memo has been annexed as

Annexure R-1/T with the status report. Thereafter, Jaspreet Singh, posted as ACP/East, Commissionerate Amritsar and a Gazetted Officer, prepared a joint Consent Memo for carrying out the search, a copy whereof has been annexed as annexure R-2/T with the status report. Learned counsel for the petitioner has contended that there has been a complete violation of the provisions of Section 50 of the NDPS Act as it was a case of joint offer given to all the accused persons and in fact the offer as well as the consent are recorded on a single document from all the accused and, therefore, the mandatory provisions of Section 50 of the NDPS Act are not complied with. In support, the learned counsel for the petitioner has relied upon **State of Rajasthan vs. Parmanand & Anr., [2014 (2) RCR (Criminal) 40]** wherein it has been held that a joint communication of the rights available under Section 50(1) of the NDPS Act to the accused would frustrate the very purpose of Section 50 and that consent taken from two accused persons by way of a joint consent memo do not meet the requirement of Section 50 of the NDPS Act as, in view of the stringent provisions of the NDPS Act, both the accused have a right to be informed separately about their right to be searched before a Magistrate or a Gazetted Officer. It is further contended by the learned counsel for the petitioner that the rights of the person who is to be searched is not an empty formality.

The learned State counsel has vehemently contended that in the present case the rigours of Section 50 would not be attracted inasmuch as it was not a case of personal search and the contraband was found from a bag. The learned State Counsel has contended that this not being a case of

personal search, the non-compliance of Section 50 of the NDPS Act can not be of any benefit to the petitioner.

In the present case since the question being raised was whether there was any personal search carried out so as to attract the rigours of Section 50 of the NDPS Act, a fresh status-report was filed by way of affidavit of Jaspreet Singh, PPS, Assistant Commissioner of Police, Amritsar on behalf of the respondent-State. A copy of the same was mailed to the VC co-ordinator on 16.10.2020 and the same has been printed and retained on the record. In the said status report it has been categorically stated that a joint consent memo was prepared on the spot and the same was signed by all the three accused. In paragraph 6 of the said status report it is stated that *“thereafter personal search of all the accused was conducted in presence of the deponent separately”*. The Personal Search Memos of all the three accused have also been attached with the status report as Annexures R-6/T, R-7/T and R-8/T.

The law is well settled that the rigours of Section 50 of the NDPS Act would apply only in cases of personal search of the accused and not in the case of search of a bag, an article or otherwise. However, in the present case, from a perusal of the status report, it appears that there was a personal search carried out and only a joint consent memo was prepared which has been produced along with the status report. It is trite that if there are more than one accused each accused has to be individually informed that he has a right to be searched in the presence of a Gazetted Officer or a Magistrate. A joint communication of the right available under Section 50(1) of the NDPS Act is not permissible. The communication has to be

clear, unambiguous and individual. In the present case, though the learned counsel for the State has vehemently argued that the present case does not fall within the category of personal search, however, the status report reveals otherwise.

Whether there has been compliance of Section 50(1) of the NDPS Act is a debatable question which would be seen at the time of the trial. As per the custody certificate, there is no other case pending against the petitioner.

In view of the peculiar facts noted above, without commenting on the merits of the case and considering that the trial is likely to take some time, this Court deems it appropriate to direct the release of the petitioner on regular bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned.

It is, however, made clear that anything observed herein shall not be construed as an expression of opinion on the merits of the case. The prosecution would always be at liberty to apply for cancellation of bail in case the petitioner is found to be misusing the concession of bail in any manner.

Disposed off in the above terms.

(ALKA SARIN)
JUDGE

26.10.2020
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NOTE: Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
