

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

**CRM-M-48553 of 2019  
Date of Decision:-27.01.2020**

Malkit Singh

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM:- HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. S.K. Passi, Advocate for  
Mr. Vikas Gupta, Advocate  
for the petitioner.

Mr. Sarabjit Singh Cheema, AAG, Punjab.

**JASGURPREET SINGH PURI J.(Oral)**

Petitioner-Malkit Singh has filed the present petition under Section 439 Cr.P.C. for grant of regular bail pending trial in case FIR No.67 dated 30.4.2019, under Section 21 of NDPS Act, registered at Police Station Sadar Tarn Taran, District Tarn Taran.

At the outset, learned counsel for the petitioner has raised a legal issue with regard to the non-compliance of Section 50 of the NDPS Act. He has pleaded that in the present case as per the FIR itself, the provisions of Section 50 of the NDPS Act have not been complied with as the accused was given the option for search from the 'gazetted police officer'.

Learned counsel for the petitioner has relied upon the judgements of this Court in *Rakesh Kumar Vs. State of Punjab* (CRM-M-9848 of 2018), *Rohit Kumar Vs. State of Haryana* (CRM-M-3531 of 2019), *Amandeep Singh Vs. State of Punjab* (CRM-M-24763 of 2019) and *Jaswinder Singh @ Kaku Vs. State of Punjab* (CRM-M-46569 of 2019), to contend that the entire prosecution stands vitiated in view of the flagrant violation of the provisions of Section 50 of the NDPS Act.

Learned State counsel has argued that even if the offer was with regard to search by a gazetted police officer, that will not vitiate the prosecution because no prejudice has been caused to the petitioner as he has ultimately been searched by a gazetted police officer (Deputy Superintendent of Police) and the recovery was made from the accused.

Learned counsel for the petitioner has submitted that the petitioner was taken into custody on 30.04.2019 and the recovery of alleged contraband recovered from the petitioner is 560 grams of heroin, which is although is a commercial quantity but marginally above the prescribed 250 grams.

I have heard the learned counsel for the parties and gone through the contents of the FIR. In the present case, the petitioner was given option for search by a 'gazetted police officer', which, in view of the judgements rendered by the Coordinate Benches of this Court, is in violation of the provisions of Section 50 of the NDPS Act, because it was a limited offer and instead of Gazetted Officer, search was conducted by a 'Gazetted Police Officer'. It has been held by Hon'ble Supreme Court in

*Gurjant Singh @ Janta Vs. State of Punjab, 2014(13) SCC 603*, that the provisions of Section 50 of the NDPS Act need to be complied with fully and not to be treated as empty formality.

Considering the totality of the circumstances and the fact that the investigation in the case is complete and challan already stands presented and the trial is likely to take some time, this Court deems it fit to admit the petitioner on regular bail. Consequently, the present petition is allowed. It is ordered that the petitioner shall be released on regular bail on his furnishing bail bond/surety to the satisfaction of the learned trial Court.

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

January 27, 2020  
Vijay Asija

( JASGURPREET SINGH PURI )  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes / No  
Yes / No