

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

CRM-M-52218-2019 (O&M)
Date of Decision:- 22.1.2020

Malkiat Singh @ Malkeet Singh @ Bittu ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Ms. Rashmi Attri, AAG, Punjab,
assisted by ASI Baldev Singh.

GURVINDER SINGH GILL, J. (Oral)

1. Petitioner-Malkiat Singh @ Malkeet Singh @ Bittu has approached this Court seeking grant of regular bail in a case registered vide FIR No.73, dated 30.3.2019, registered at Police Station City Tarn Taran, District Tarn Taran, under Section 21 NDPS Act.
2. The case of the prosecution, in nutshell, is that the petitioner was found in possession of 380 grams of 'heroin' which he was allegedly found carrying in a polythene bag in right pocket of his trouser.
3. The learned counsel for the petitioner has submitted that in the present case, the offer extended to the petitioner is defective inasmuch as while extending the offer in terms of Section 50 of the NDPS Act, the petitioner was asked as to whether he seeks to be

searched in the presence of a ‘Gazetted Officer of Police Department’ or a ‘Magistrate’.

4. Opposing the petition, the learned State counsel has submitted that since it was a case of ‘chance recovery’, Section 50 of the NDPS Act, in any case, will not be applicable and that the offer as extended would meet the requirements of Section 50 of the NDPS Act.
5. Having considered rival submissions addressed before this Court and while noticing that the offer in respect of search before a ‘Gazetted Officer’ has been restricted to the Gazetted Officer of Police Department only, it will certainly be debatable as to whether such an offer is a valid and would meet the requirement of Section 50 of the NDPS Act.
6. Without commenting anything on the merits of the case, the petition is accepted and petitioner-Malkiat Singh @ Malkeet Singh @ Bittu is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.
7. It is, however, made clear that none of the observations made above shall be construed to be an expression on merits of the main case.

January 22, 2020
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(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No