

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

CRM-M-7647-2020 (O&M)
Date of Decision:- 14.10.2021

Sahildeep Singh @ Sabi @ Deep @ Shaeldeep Singh

.... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

Mr. Ajay Pal Singh Gill, DAG, Punjab,
assisted by ASI Des Raj.

GURVINDER SINGH GILL, J. (Oral)

CRM-35010-2021

In view of the reasons mentioned in the application, the same is allowed and Annexure P-13 to P-15 are taken on record subject to all just exceptions.

CRM-M-7647-2020 (O&M)

1. The petitioner has approached this Court seeking 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, Ludhiana, under Section 22/61/85 of NDPS Act, wherein the allegations, in nutshell, are to the effect that on 1.1.2018, when the petitioner was apprehended while he was travelling in a Montero vehicle along with co-accused Avninder Singh @ Shetty, a recovery of 700 grams of 'Heroin' was effected from his jacket's pocket.

2. Learned counsel for the petitioner submits that he has falsely been implicated in the instant case and that all the safeguards as mandated under Section 50 of NDPS Act have not been adhered to. It has been submitted that the offer in terms of Section 50 NDPS Act has not been extended in letter and spirit inasmuch as a restricted offer has been extended to the effect that as to whether the petitioner wished to be searched in the presence of a Gazetted Officer of police or before a Magistrate. Learned counsel has further submitted that an identically situated co-accused who had also been extended a defective offer has already been ordered to be released on bail vide order dated 10.11.2020 passed in CRM-M-21733-2020 (Annexure P-11).
3. Opposing the petition, learned State counsel has submitted that a perusal of the FIR would show that the offer under Section 50 of the Act had been extended in a proper manner and that in any case the petitioner cannot be said to have been prejudiced even if the search was effected by a Gazetted Officer of the police department. Learned State counsel has however, informed that the petitioner as on date has been behind bars since the last about 3 years and 9 months and that

he has neither been convicted in any matter under NDPS Act nor is any such matter under NDPS Act pending against him.

4. I have considered rival submissions addressed before this Court.
5. A perusal of the non-consent memo would show that while extending the offer/option in terms of Section 50 NDPS Act to the petitioner, the same has rather been extended in a restricted manner. The relevant translated extract from the said non-consent memo (Annexure P-14) reads as follows:

“
You have a legal right that you can get your car and
you searched before a Police Gazetted officer or a
Magistrate.....”

6. A perusal of the aforesaid non-consent memo does show that the offer, as extended is restricted to Gazetted Officer of a police department or a Magistrate and cannot be said to be a proper offer in terms of Section 50 NDPS Act.
7. The petitioner in any case has been behind bars for a substantial period of 3 years and 9 months. An identically situated co-accused had already been released on bail. The petitioner otherwise has a clean record inasmuch as no other case under NDPS Act is pending against him and nor is he convicted in any such case. The petition, as such, merits acceptance and is hereby 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.

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

14.10.2021

Mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No