

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

CRM-M-8770-2020

Date of decision: 15.09.2021

Babli Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Amandeep Bawa, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

(through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.175 dated 02.09.2018 under Section 18 of NDPS Act (Section 29 of NDPS Act and Sections 472 & 473 IPC were added subsequently), registered at Police Station Mandi Gobindgarh, Tehsil and District Fatehgarh Sahib.

On 06.03.2020, the following order was passed:

“Learned counsel for the petitioner submits that in the FIR, it is stated that when the petitioner and co-accused were apprehended by the Investigating Officer, he gave them a notice under Section 50 of NDPS Act that since he has suspicion that both the accused are having some objectionable narcotic substance in their possession and want to search them as well as of their canter but they have a legal right to be searched from a Magistrate or a Gazetted Officer and the same can be

called at the spot. It is further stated in

the FIR that after thinking for some time, both the accused persons replied that they do not want their personal search and search of the canter conducted from the Investigating Officer and want that they be searched by a Gazetted Officer. On which, ASI Balwinder Singh recorded dissent statement of petitioner Babli Singh as well as Rina Dass.

Learned counsel for the petitioner has referred to dissent statement of petitioner Babli Singh recorded by ASI Balwinder Singh on 02.09.2018, where it is stated that the petitioner replied that he has full faith on the Investigating Officer and he can search him as well as his canter.

Considering the fact that there are variations in the version given in the FIR as well as in the dissent statement recorded by ASI Balwinder Singh, the petitioner is directed to be released on interim bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate, concerned.

List again on 07.05.2020.

The Senior Superintendent of Police, Fatehgarh Sahib is directed to look into both the versions and submit the affidavit on or before the next date of hearing.”

In pursuance of the aforesaid order, reply, by way of the affidavit of the Senior Superintendent of Police, Fatehgarh Sahib, was filed, which is on record. In reply, it is stated that at that time, dissent memo was written by Inspector Kuljit Singh but inadvertently and under *bona fide* mistake, it was stated in the dissent memo that the accused have full faith in him.

Be whatsoever, it is a document of investigation and cannot be termed as *bona fide*/inadvertent mistake at this stage for the purpose of deciding the regular bail application as it will be a matter of trial.

Accordingly, the present petition is allowed and the order dated 06.03.2020, granting interim bail to petitioner, is made absolute.

15.09.2021
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No