

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

CRM-M-16134-2021

Date of Decision:11.11.2021

Sandeep Singh alias Dela

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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

Mr. Rana Harjasdeep Singh, DAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Case heard *via* video conference.

By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 Cr.P.C., upon FIR No.193, dated 19.12.2020, having been registered at Police Station Tarsikka, District Amritsar Rural, alleging therein the commission of an offence punishable under Section 22 of the Narcotics and Psychotropic Substances Act, 1985.

The reply filed on behalf of the respondent State by the DSP, Jandiala, dated 01.07.2021, is ordered to be taken on record.

Learned counsel for the petitioner points to the fact that even as per the FIR itself the recovery of the contraband alleged to have been made from the petitioner, was from the pocket of the petitioner but with no gazetted officer called to the spot and only an offer allegedly made to him of

calling such an officer, or to get himself searched by the ASI present at the spot.

He points to paragraphs 26, 27 and 28 of the judgment of the Supreme Court in **Arif Khan @ Agha Khan vs. State of Uttrakhan** (Crl. Appeal No.273 of 2007), decided on 27.04.2018.

Learned State counsel on the other hand relies upon the judgment of the Supreme Court in **Vijaysinh Chandubha Jadeja vs. State of Gujarat**, 2011 (1) SCC 609, decided on 29.10.2010) and **Arif Khans'** case (supra) itself, to submit that once an offer is made and a consent memo is signed by an accused that he may be searched by the officer present on the spot, there is a complete compliance of Section 50 of the NDPS Act, 1985.

Having considered the matter, what is to be observed by this court is that once a person has been already apprehend, and in this case by four police officials as is stated in the FIR itself, there would a very slim chance of his escaping and consequently, simply an offer made by an ASI of police who is most definitely not a gazetted officer, cannot be accepted by this court to have been a genuine offer made, with the accused having allegedly accepted being searched by the police officials themselves, he in any case being in no position to refuse.

Thus, the safeguard provided under Section 50 of the NDPS Act, 1985, is that a person who is to be searched, must be so searched in the presence of a gazetted officer or a Magistrate, with the minimum punishment for any person found with contraband of commercial quantity, being 10 years rigorous imprisonment.

Hence, keeping in view the above, as regards this petition the petitioner is ordered to be admitted to bail, upon him furnishing bail and surety bonds to the satisfaction of the trial court, with the petition therefore allowed.

November 11, 2021

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether reasoned/speaking : Yes
Whether reportable : Yes