

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

CRM-M-20957-2020 (O&M)
Date of Decision:- 4.2.2021

Mandeep Kaur ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Rishu Mahajan, Advocate for the petitioner.

Mr. Dhruv Dayal, Sr. DAG, Punjab.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner seeks grant of regular bail in a case registered vide FIR No.214 dated 24.11.2019 under Section 21 of NDPS Act at Police Station Chattiwind, District Amritsar.
2. The FIR was lodged at the instance of Inspector Vikrant Sharma wherein it is alleged that on 24.11.2019 when he alongwith other members of the police party was patrolling, then a secret informer informed that Ranjit Singh @ Rana, Harjit Singh @ Happy and Mandeep Kaur wife of Harjit Singh were travelling in a car bearing registration No. PB02-BP-6906 and that they indulged in sale of 'heroin'. Pursuant to receipt of said information barricading was raised and the aforesaid car was intercepted. While the said car driver disclosed his name as Ranjit Singh @ Rana, the person sitting on the front passenger seat disclosed his name as Harjit Singh @ Happy and the

lady sitting on the rear seat disclosed her name as Mandeep Kaur. Inspector Vikrant Sharma extended an offer in terms of Section 50 of NDPS Act (in short hereinafter referred to as '*the Act*'). Since the said persons declined to be searched by Inspector Vikrant Sharma, he informed SHO Police Station Chattiwind who further informed Deputy Superintendent of Police, Attari Shri Gurpartap Singh Sahota. The SHO as well as the DSP reached at the spot. The SHO also extended an offer in terms of Section 50 of the Act to the aforesaid three persons who expressed that they wish to be searched in the presence of a gazetted officer. Shortly thereafter, DSP Gurpartap Singh Sahota reached at the spot and who also extended an offer in terms of Section 50 of the Act and the three accused reposed confidence in the DSP and stated that he may get their search effected. The search of Ranjit Singh @ Rana led to recovery of '*heroin*' contained in a polythene bag from the right pocket of the jacket worn by him which upon weighment was found to be 600 grams. The search of Harjit Singh @ Happy led to recovery of 550 grams of '*heroin*' from the right pocket of the jacket worn by him. Mandeep Kaur was also found to be carrying 370 grams of '*heroin*' in the right pocket of jacket worn by her which had been kept in a polythene bag. In other words 1 kilograms and 520 grams of '*heroin*' was recovered from the three accused.

3. The learned counsel for the petitioner has submitted that she has falsely been implicated in the present case and that no recovery whatsoever was ever effected from her. The learned counsel has further submitted that even if the allegations as levelled in the FIR are taken to be correct, still it is a case where the provisions of Section 50 of the Act have not been complied with

in letter and spirit inasmuch as the petitioner was not extended the offer in terms of Section 50 of the Act in correct manner and infact a restricted offer was extended which cannot be said to be proper compliance of Section 50 of the Act and as such, the petitioner is entitled to be released on bail.

4. On the other hand, the learned State counsel has submitted that since an offer in terms of Section 50 of the Act was extended correctly by the DSP, the petitioner cannot be said to be prejudiced in any manner. It has further been submitted that since it is a case of recovery of 'commercial' quantity of contraband, no case for grant of bail is made out.
5. I have considered rival submissions addressed before this Court.
6. A perusal of non-consent memo (Annexure P-3) wherein Inspector Vikrant Sharma while extending an offer in terms of Section 50 of the Act has restricted the offer to be searched by a police gazetted officer. Similar is the position when the SHO extended an offer vide non-consent memo (Annexure P-5). However, this Court finds that when the DSP reached at the spot, he also extended an offer in terms of Section 50 of the Act vide consent memo (Annexure P-6) wherein he has extended the offer correctly and has not restricted the same in any manner. In these circumstances, the defect if any in the offer extended previously by the Inspector and by the SHO would loose significance and the defect would stand cured upon a correct offer having been extended subsequently by the DSP before effecting search of petitioner. It is also borne out that the search of the petitioner was conducted by a lady constable Kulwinder Kaur as would be required under provisions of the Act. Even if, for the sake of arguments, it is held that the petitioner is not to be attributed conscious possession of the contraband

recovered from co-accused, still the recovery effected from the personal search of petitioner i.e. 370 grams of 'heroin' would fall in the category of 'commercial' quantity. As such, the fetters imposed by Section 37 of the Act would be attracted.

7. Bearing in mind the provisions of Section 37 of the Act and the present case being a case of recovery of “*commercial quantity*” and that it cannot be said at this stage that the petitioner is innocent or that if released on bail she would not commit similar offence again, this Court does not find any ground for release of the petitioner on bail. Hon’ble Apex Court in its latest judgement 2020 (1) RCR (Criminal) 818 - State of Kerala etc. vs. Rajesh Kumar etc. has reiterated the legal position as regards the limitations imposed by Section 37 NDPS Act and has further held that a liberal approach in matters of bail in offences under NDPS Act is uncalled for. There is nothing on record at this stage from which it could be inferred that the petitioner is not guilty of the offence in question. The petition is sans merit and is hereby dismissed.

4.2.2021

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No