

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207

CRM-M-25592-2020 (O&M)
DATE OF DECISION: 25.01.2021

NARBIR SINGH

... Petitioner(s)

Versus

STATE OF HARYANA

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Chirag Kundu, Advocate for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking regular bail in FIR No.413 dated 26.09.2019, under Section 21 of the NDPS Act, 1985, registered at Police Station Chand Hut, District Palwal.

Learned counsel for the petitioner contends that 424 grams of heroin was allegedly recovered from the petitioner. He, however, contends that the search, which was effected from the petitioner, is in violation of Section 50 of the NDPS Act, inasmuch as the offer was made to the petitioner for search before a gazetted officer or competent officer. The offer for search before a Magistrate was not given to the petitioner. He has referred to the judgments of the Supreme Court in the cases of **State of Rajasthan Vs. Parmanand and another, 2014 (2) RCR (Criminal) 40** and **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, AIR 2011 SC 77**, wherein it has been held that compliance of Section 50 of the NDPS Act is mandatory. He further contends that the petitioner is in custody for over 1 year and 4 months and there is no other case under the NDPS Act pending against the petitioner. The petitioner was involved in another case under the NDPS Act in the year 2013 but he was acquitted in that case.

Learned State counsel, upon instructions from ASI Dharminder Singh, contends that the offer was made for search before gazetted officer and the petitioner was also searched before a gazetted officer and, therefore, there is substantial compliance of Section 50 of the NDPS Act. He further contends that although challan has been filed but no prosecution witness has been examined.

Heard through video conferencing.

It is apparent that offer for search before a Magistrate in terms of Section 50 of the NDPS Act was not made to the petitioner. The recovery was effected from the pocket of the petitioner. The petitioner is in custody for over 1 year and 4 months and the conclusion of the trial is likely to take some time in view of COVID-19 pandemic.

Therefore, without expressing any opinion on the merits of the case, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing requisite bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

(ANUPINDER SINGH GREWAL)
JUDGE

25.01.2021

SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No