

CRM-M-39329-2020

Date of Decision:12.02.2021

Pawan Kumar

.....Petitioner

Vs.

State of Punjab

....Respondent

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. J.S.Thakur, Advocate,
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

Case heard by video conferencing.

By this petition, the petitioner seeks the concession of 'regular bail' under the provisions of Section 439 Cr.P.C., upon FIR No.17, dated 22.01.2020, having been registered at Police Station Phillaur, Jalandhar, alleging therein the commission of offences punishable under Section 22 of the Narcotics and Psychotropic Substances Act, 1985.

Learned counsel for the petitioner having, on the last date of hearing, cited the judgment of **Arif Khan @ Agha Khan vs. State of Uttrakhan** (Crl. Appeal No.273 of 2007), decided on 27.04.2018, to submit that simply because an offer is shown to have been made to the petitioner (as per the FIR) whether he wants to be get searched before a gazetted officer or before the arresting officer himself, is not compliance of Section 50 of the said Act, today he refers to the following passage from the aforesaid judgment:-

“24. Keeping in view the aforementioned principle of law laid down by this Court, we have to examine the question arising in this case as to whether the prosecution followed the mandatory procedure prescribed under Section 50 of the NDPS Act while making search and recovery of the contraband “Charas” from the appellant and, if so, whether it was done in the presence of a Magistrate or a Gazetted Officer so as to make the search and recovery of contraband “Charas” from the appellant in conformity with the requirements of Section 50.

26. It is the case of the prosecution and which found acceptance by the two Courts below that since the appellant (accused) was apprised of his right to be searched in the presence of either a Magistrate or a Gazetted Officer but despite telling him about his legal right available to him under Section 50 in relation to the search, the appellant (accused) gave his consent in writing to be searched by the police officials (raiding party), the two Courts below came to a conclusion that the requirements of Section 50 stood fully complied with and hence the appellant was liable to be convicted for the offence punishable under the NDPS Act.

27. We do not agree to this finding of the two Courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband “Charas” does not satisfy the mandatory requirements of Section 50 as held by this Court in the case of **Vijaysinh Chandubha Jadeja** (supra). This we say for the following reasons.

28. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or Gazetted Officer; Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “Charas” was not made from the appellant in the presence of any Magistrate or Gazetted Officer; Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “Charas” from him, was the Gazetted Officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “Charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a Gazetted Officer; Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a Gazetted Officer.”

Learned State counsel has not been able to distinguish the aforesaid judgment.

That being so, without making any comment on the actual merits of the case, the petitioner having made out a case for the grant of bail at least, the petition is allowed and the petitioner is ordered to be admitted to bail, upon him furnishing adequate bail and surety bonds to the satisfaction of the trial court/Duty Magistrate concerned.

It is also to be noticed that upon query learned State counsel submits, on instructions, that there is no other criminal case registered against the petitioner.

February 12, 2021

dharamvir/

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO