

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-52423-2019 (O&M)****Date of Decision: 21.01.2021**

Dharminder Singh @ Fauji

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ranbir Singh Sekhon, Advocate, for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

*(proceedings conducted through video conferencing)***GURVINDER SINGH GILL, J. (Oral)****CRM-1547-2021**

For the reasons mentioned in the application, the same is allowed and the consent memo and non-consent memo are taken on record as Annexures P-2 & P-3.

CRM-M-52423-2019

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered vide FIR No.112 dated 28.06.2019 at Police Station Dharamkot, District Moga, under Section 21 of the NDPS Act.
2. The allegations in nutshell are that on 28.06.2019, the petitioner was found in possession of 260 grams of *heroin*, which was recovered from the left pocket of the *Capri* worn by the petitioner.
3. Learned counsel for the petitioner has submitted that in the instant case the provisions of Section 50 of the NDPS Act have not been

complied with in letter & spirit, as a defective offer was extended both by the ASI, who initially apprehended and also by the DSP, who was later called at the spot, inasmuch as both have stated that the petitioner has a right to be searched in the presence of a Police Gazetted Officer or a Magistrate, which is rather a restricted offer.

4. Learned State counsel could not dispute the aforestated factual position. He has, however, informed that as on date the petitioner has been behind bars since the last about 1 year and 6 months and that he is not involved in any other case.
5. Having regard to the aforestated factual position, this Court finds that it would be debatable as to whether the offer extended to the petitioner in the instant case is a valid offer in terms of Section 50 of the NDPS Act or not. Without commenting any further on the merits of the case and while noticing the custody period of the petitioner, the petition is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

21.01.2021

Vimal

(GURVINDER SINGH GILL)
JUDGE

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