

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

205

CRM-M-52989-2019

Date of Decision: 06.07.2021

Dinesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. R. S. Mamli, Advocate,
for the petitioner.

Mr. Vishal Kashyap, AAG, Haryana,
assisted by SI Rajpal.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking grant of regular bail in respect of a case registered against him vide FIR No.84 dated 25.04.2019 at Police Station Adampur, District Hisar, under Sections 22/61 of the NDPS Act.
2. As per the case of the prosecution, when the police was present at bus stop Village Siswal on 25.04.2019 for the purpose of patrolling and searching, then one person was noticed coming on a motorcycle who was carrying a plastic bag. When the said person was signalled to stop, he tried to turn back but was apprehended by the police. Upon being asked, he disclosed his name as Dinesh Kumar. He was told that the bag being carried by him was to be searched and that in case, he desired he could get the search effected before some Illaqa Magistrate or a Gazetted Police Officer, as he had the right for the same. The said person expressed that he did not have

faith in the police officer, who had made the said offer and expressed that he wanted his search to be effected either in the presence of a Magistrate or a Gazetted Police Officer. Accordingly, DSP Narinder Kumar was called at the spot and in his presence the search of the bag was conducted, which yielded recovery of the following contraband:

Sr. No.	Name of Contraband	Salt	Number of tablets
1.	Ekowill-One	Lorazepam	3200
2.	Ativan 2 mg	Lorazepam	750
3.	Acetaminophen Tramadol HCL	Tramadol	1616
4.	Carisoprodal Tab	Alrazolam	800
5.	Alko-I	Alrazolam	3000
6.	Pindol Forte	Tramadol	2200
7.	Alprasafe 05	Alprazolam	7800
8.	Hacket Injection	Pentazoane	100
9.	Tramazen	Tramadol	35
10.	Wincirex	Codeine	37 Bottles

3. Learned counsel for the petitioner has submitted that he has falsely been implicated in the instant case and that provisions of Section 50 of the NDPS Act have not been complied with in letter & spirit inasmuch as a defective and restricted offer was extended to him as regards his search to be effected before a Gazetted Officer, which had been restricted to Gazetted Officer of Police Department, which is not in spirit of the Act.
4. Opposing the petition, learned State counsel has submitted that since it is a case where recovery was effected from a bag and not strictly from the personal search, therefore, violation, if any, in respect of compliance of Section 50 of NDPS Act would not be significant and would not affect the merits of the case. Learned State counsel has, however, informed that the petitioner as on date has been behind bars

since the last about 2 years and 2 months and that he is not involved in any other case.

5. I have considered rival submissions addressed before this Court.
6. It will certainly be debatable as to whether the offer as extended in the instant case in terms of Section 50 of the NDPS Act can be said to be a valid offer or as to whether any defect in offer would have a material bearing on the merits of the case, since the recovery had been effected from a bag and not strictly from the personal search. In any case, since the petitioner has been behind bars for a substantial period of 2 years and 2 months and is not even stated to be involved in any other case and since not even a single PW out of cited 20 PWs has been examined, further detention of the petitioner will not serve any useful purpose as the conclusion of trial will take some time. The petition, as such, 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.

06.07.2021

VY/Vimal

(GURVINDER SINGH GILL)**JUDGE**Whether speaking/reasoned: **Yes/No**Whether reportable: **Yes/No**