

In the High Court of Punjab and Haryana, at Chandigarh

**Criminal Misc. No. M-1437 of 2022
(Reserved on 19.01.2022)**

Date of Decision: 17.05.2022

Sarabjeet Kaur alias Sarabjit Kaur alias Manu

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Priyanshu Kamra, Advocate
for the petitioner(s).

Mr. H.S.Sullar, Deputy Advocate General,
Punjab, for the respondent.

Anil Kshetarpal, J.

1. The petitioner prays for grant of bail in a criminal case arising from FIR No. 174 dated 21.09.2021, registered under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Sangat, District Bathinda.

2. As per the case of the prosecution, the petitioner, along with Sharanjeet Kaur, was found sitting by the side of road near drain behind the trees, while they were searching a plastic bag which was lying on the ground. The police party, on suspicion, stopped the car and on being asked, they disclosed their names as Sarabjeet Kaur and Sharanjeet Kaur. On search of the bag, 5400 intoxicant tablets of Radol (containing salt of Tramadol Hydrochloride), which were clearly visible, were found. Thereafter, the police party also conducted personal search through Jaspreet Kaur, but no contraband was found.

3. The Special Court dismissed the application for grant of bail to the petitioner in view of Section 37 of the 1985 Act as the recovery from the petitioner and her co-accused falls in the category of commercial.

4. The learned counsel representing the petitioner while relying upon the judgments passed by the Supreme Court in *State of Rajasthan v. Parmanand and Another (2014) 5 SCC 342* and *S.K.Raju alias Abdul Haque alias Jagga v. State of West Bengal (Criminal Appeal No. 459 of 2017, decided on 05.09.2018)* contends that Section 50 of the 1985 Act has not been complied with, therefore, the petitioner is entitled to bail.

5. Per contra, the learned counsel representing the State has drawn the attention of the Court to the judgment of larger Bench in *State of Punjab v. Baljinder Singh (2019) 10 SCC 473* to contend that if the personal search did not yield any contraband, but search of their bag yielded contraband, the personal search of a bag would not stand vitiated for non-compliance of Section 50 of the 1985 Act.

6. This Court has carefully read the judgments referred to by the learned counsel representing the parties. It may be noticed that at this stage, it would not be appropriate to express any final opinion. A larger Bench of the Supreme Court in *Baljinder Singh's case (supra)*, on a reference, has held that if there is no recovery of contraband from the personal search of the accused, but the recovery of contraband is from the vehicle or bag, it would not invalidate the search of the bag or vehicle. In *S.K.Raju alias Abdul Haque alias Jagga's case (supra)*, the Supreme Court, while dismissing the appeal of the accused against the conviction, has observed that Section 50 of the 1985 Act is applicable. In the considered view of this

observations made in *S.K.Raju alias Abdul Haque alias Jagga's case(supra)* have to be read in that context. In *Parmanand's case (supra)*, the Supreme Court has decided about the requirement of individual communication to each of the accused.

7. At the cost of repetition, the recovery from the petitioner and her co-accused falls in the commercial category. Section 37 of the 1985 Act is applicable. Hence, no ground is made out to grant the concession of bail to the petitioner. Consequently, the present petition is dismissed.

(Anil Kshetarpal)
Judge

May 17, 2022
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No