

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

**CRM-M-8636-2022 (O&M)
Date of Decision: 07.03.2022**

Harjinder Kumar @ Ghirla @ Kirla

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akbarjit Singh, Advocate
 for the petitioner.

Mr. Sidakmeet Singh Sandhu, DAG, Punjab.

JASJIT SINGH BEDI, J.(Oral)

The present petition has been filed under Section 439 Cr.P.C. for grant of regular bail in case FIR No.120 dated 09.06.2017, registered under Section 22 NDPS Act, 1985 at Police Station Goraya, District Jalandhar Rural (Annexure P-1).

As per the FIR, when the Police was investigating FIR No.118 dated 09.06.2017 registered under Sections 379B and 382 IPC and Sections 25, 54 and 59 Arms Act, at Police Station Goraya, District Jalandhar, ASI Pankaj Kumar issued instructions that the personal search of accused-Harjinder Singh @ Ghirla should be conducted. It is stated that an offer was provided to the petitioner to be searched by some Gazetted Officer or Magistrate and the same could be arranged at the spot. However, the petitioner answered that he had full confidence in the

IO, who could conduct his search. A consent memo regarding the same was also prepared. Ultimately, the Investigating Officer himself conducted the search and recovered a plastic bag from the right pocket of the petitioner, in which 170 grams contraband was found.

The learned counsel for the petitioner submits that there has been violation of Section 50 NDPS Act while arresting the petitioner. The said provision is mandatory in nature and the violation thereof would entitle the petitioner to the grant bail. He further submits that the petitioner has undergone a substantial period of custody and even if he was convicted, he would be entitled to the concession of suspension of sentence in 4 years in terms of the judgment of **Daler Singh Vs. State of Punjab, 2007(1) RCR (Criminal) 316**. Thus, he prays for the grant of bail.

He relies on the judgment of Hon'ble Supreme Court in 'State of Rajasthan Vs. Parmanand and another, 2014(2) Law Herald (SC) 913' and of this Court in 'Sunil Kumar Vs. State of Punjab', CRM-M-1650-2022 decided on 09.02.2022 to contend that violation of Section 50 NDPS Act would entitle the petitioner to the grant of bail.

On the other hand, the learned State counsel has vehemently opposed the bail application stating therein that such kind of cases are on the rise and that the petitioner is under-trial in one more case under the IPC and is a convict in another. Thus, he contends that the petitioner being a habitual offender ought not to be granted the concession of bail. He, however admits the period of custody undergone by the petitioner

and the factum that the search in the present case was conducted by the I.O.

I have heard the rival contentions of both the parties.

The violation of Section 50 of NDPS Act, if any, would be a moot point during the course of trial.

Admittedly, the petitioner has undergone a total custody period of 03 years and 10 days of incarceration. There is no other pending case under the NDPS Act against the petitioner. Further out of 12 prosecution witnesses 05 witnesses have been examined and the trial is not likely to be concluded in the near future.

Therefore, without commenting upon the merits of the case, keeping in view the fact that the trial is not likely to be concluded in the near future and the period of custody already undergone by the petitioner, the present petition is allowed and the petitioner-Harinder Kumar @ Ghirla @ Kirla is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, Jalandhar.

It is further made clear that if petitioner indulges in similar offence for which he is currently charged, the State would be at liberty to move an application for cancellation of bail.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

(JASJIT SINGH BEDI)
JUDGE

07.03.2022

JITESH

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