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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-7980-2022
Date of Decision: 12.10.2022

Simrandeep Singh @ Soni

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. L.S. Sekhon, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.339 dated 29.10.2020, under Sections 22-C and 27-A of NDPS Act, registered at Police Station Bhuna, District Fatehabad.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 29.10.2020 which is almost 2 years and charges have been framed on 02.09.2022 and till date no witness has been examined. He submitted that the petitioner is not involved in any other case under the NDPS Act and he has been falsely implicated only because of the reason that earlier he was involved in some cases under the IPC. He submitted that as per the FIR there was an alleged recovery of 10000 tablets of Tramadol which he was carrying in one plastic bag on his right shoulder. He further submitted that since personal search was required

and when the offer was given by the police officer under Section 50 of the NDPS Act, then the same was totally defective. He referred to the contents of the FIR whereby when an offer under Section 50 of the NDPS Act was given where it was stated by the police officer that he has a legal right to get himself searched either in the presence of Magistrate or a Gazetted Officer or a Nodal Officer appointed by the Deputy Commissioner in pursuance of the order passed by this Court in CRM-M-5074-2019 and in pursuance of the aforesaid defective offer, the petitioner had opted to get himself searched in the presence of a Nodal Officer appointed by the Deputy Commissioner and thereafter, the Nodal Officer was called in whose presence search was conducted. Learned counsel has further submitted that there is neither provision of getting searched from Nodal Officer under the provisions of Section 50 of the NDPS Act nor there is such kind of nomenclature used in the aforesaid judgment passed by this Court in CRM-M-5074-2019 and it was only an artificial and superficial authority created by the police officer who had given the offer. He further submitted that the provisions of Section 50 of the NDPS Act are mandatory in nature and in case the offer is on the face of it defective, then rather the entire trial gets vitiated. He further submitted that the police officer who gave offer under Section 50 of the NDPS Act has travelled beyond the express statutory provisions of Section 50 of the NDPS Act which are rather mandatory in nature and the provisions of Section 50 of the NDPS Act are meant for safeguarding the interest of the accused persons and, therefore, the provisions of Section 37 of the NDPS Act will not apply in the present case, even if the alleged confiscated quantity falls in the category of commercial quantity.

On the other hand, Mr. Naveen Singh Panwar, learned Deputy

Advocate General, Haryana has submitted that it is correct that the petitioner is in custody for about 2 years but no witness has been examined till date. He submitted that so far as the offer given by the police officer under Section 50 of the NDPS Act to the petitioner is concerned, as per the FIR itself the offer was given for getting him searched in the presence of Magistrate or a Gazetted Officer or a Nodal Officer in pursuance of the orders passed by this Court in CRM-5074-2019. Learned Deputy Advocate General, Haryana has however tried to explain that the police officer was only explaining to the petitioner that a Gazetted Officer would be a Nodal Officer once the notification is issued by the Government for the purpose of Section 50 of the NDPS Act. He further submitted that it is correct that the petitioner is not involved in any other case under the NDPS Act but he is involved in 2 more cases under the IPC in which he is an undertrial. He further submitted that since the quantity was commercial quantity, the prayer of the petitioner for grant of bail is barred under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for about 2 years and is not involved in any other case under the NDPS Act. The alleged recovery from the petitioner was of 10000 tablets of Tramadol which undoubtedly falls in the category of commercial quantity. The petitioner is stated to be not involved in any other case under the NDPS Act but he is involved in 2 more cases under the IPC in which he is an undertrial.

An important question which needs consideration in this case is that whether the police officer who is making an offer under Section 50 of the NDPS Act to the accused can add, subtract or substitute any other

authority or change its nomenclature which is not so prescribed under the provisions of Section 50 of the NDPS Act or not. Section 50 of the NDPS Act is meant for safeguarding the rights of an accused person. The provisions of Section 50 of the NDPS Act are reproduced as under:-

“50. Conditions under which search of persons shall be conducted.

(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate.

(2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in sub-section (1).

(3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

(4) No female shall be searched by anyone excepting a female.

(5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drugs or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy-two hours send a copy thereof to his immediate official superior.]

A perusal of the same would show that when an offer is to be given, then the scope of the express provisions of Section 50 of the NDPS Act pertain only to the extent of a Gazetted Officer or a Magistrate. The provisions of Section 50 of the NDPS Act are beneficial in nature for the purpose of protecting and safeguarding the rights of the accused persons. Therefore, the cardinal principle rule of literal construction will apply for the purpose of interpretation of this Special Statute of NDPS Act. It is a settled law that the provision of a legislation is to be interpreted at the first instance in its plain language and the intension of the legislature is to be seen for the purpose of its interpretation. Under Section 50 of the NDPS Act, two expressions have been used i.e. Gazetted Officer and a Magistrate. Therefore, no third authority by whatsoever mean or even by changing of the nomenclature can be added to the same. The police officer who is making an offer under Section 50 of the NDPS Act can neither add nor subtract nor change its nomenclature. Therefore, the police officer exceeded in its authority to have added another officer by the name of a Nodal Officer. A perusal of the judgment in CRM-M-5074-2019 would show that there is no such expression used in the judgment with regard to Nodal Officer while issuing certain guidelines. Rather on the other hand in para 9 of the aforesaid judgment while issuing guidelines it has been observed that no third option can be given.

The alleged confiscation of contraband in the present case was

stated to be by way of a chance recovery and so far as the applicability of Section 50 of the NDPS Act is concerned, the same can be considered in the light of a judgment of the Hon'ble Supreme Court in ***Gurjant Singh @ Janta Versus State of Punjab [2014(13) SCC 603]***. In the present case as per the prosecution story, when the police party saw one person coming alongwith one plastic bag on his right shoulder, he suddenly tried to hide himself in the bushes but he was apprehended alongwith the plastic bag. His name was asked to which he told his name as Simrandeep Singh @ Soni (Petitioner). It has been so stated in the FIR that thereafter the Sub Inspector stated that he was having full suspicion that the plastic bag had some intoxicant substance and for that purpose search was necessary. The Sub Inspector thereafter told the petitioner that he has legal right that he can get himself searched in the presence of a Magistrate, Gazetted Officer or by a Nodal Officer as per orders passed in case No.5074 of 2019 appointed by the Deputy Commissioner, Fatehabad and even the notice under Section 50 of the NDPS Act also stated that Sub Inspector has full suspicion that the petitioner was carrying some intoxicant substance. Thereafter, the petitioner stated that he wants himself and his bag searched in the presence of a Nodal Officer appointed by the Deputy Commissioner.

The Hon'ble Supreme Court in the case of ***Gurjant Singh @ Janta Versus State of Punjab (Supra)*** while referring to the earlier judgment of Supreme Court in ***State of Punjab Versus Balbir Singh [1994(1) RCR (Criminal) 736]*** observed that when it is a case of a chance recovery, then the provisions of Section 50 of the NDPS Act will not apply. However, the aforesaid proposition would mean in a situation where the police party suddenly comes across a person from whom search is conducted

and some intoxicant substance is found and therefore, Section 50 of the NDPS Act would not be applicable. However, in a case where the police party has suspicion at the first instance that the person was in the possession of an intoxicant substance and he is given an offer and notice under Section 50 of the NDPS Act for getting himself searched, then the provisions of Section 50 of the NDPS Act will be attracted. In the aforesaid judgment in ***Gurjant Singh @ Janta Versus State of Punjab (Supra)*** a tractor trolley was apprehended from where there was a suspicion of carrying intoxicant substance by noticing three gunny bags in the trolley and thereafter, notice was given under Section 50 of the NDPS Act but the search was defective since it was conducted by a DSP who was only an Inspector functioning as a DSP in the category of Own Rank Pay. It was observed by the Hon'ble Supreme Court that holding of search and seizure in the presence of a Gazetted Officer or a Magistrate cannot be an empty formality and when police party had noticed three gunny bags in the tractor of the accused in the aforesaid case, they felt the necessity of affording an opportunity to the accused to conduct the search in the presence of a Gazetted Officer or a Magistrate being imperative and they felt the need to invoke the provisions of Section 50 of the NDPS Act and therefore, once Section 50 of the NDPS Act is to be invoked, then the same has to be applied in true spirit. In the present case as well it has come in the FIR itself that the Sub Inspector felt necessity of giving opportunity to the petitioner for being searched in the presence of a Gazetted Officer or a Magistrate but when an option was given by way of a notice, then a third option was also given which was beyond the scope of Section 50 of the NDPS Act. The relevant portion of the aforesaid judgment is reproduced as under:-

“16. If the ratio of the said decision had been properly understood, the flaw committed by the trial Court and as confirmed by the High Court in our considered opinion would not have arisen. The distinct feature in the case on hand was that on the date of occurrence i.e. on 04.04.1996 at 00.15 AM, the police party headed by P.W.6, accosted a tractor trolley coming from the side of village Ugrahan, which was stopped by him and that when the driver after stopping the tractor tried to escape was apprehended by the police team. The most crucial aspect of the case was that P.W.6 noticed three gunny bags lying in the tractor of the appellant and felt that some incriminating substance was kept in those gunny bags. P.W.6, therefore, took the view that before effecting search of the gunny bags, the necessity of affording an opportunity to the appellant to conduct the search in the presence of a Gazetted officer or a Magistrate was imperative. In other words, after noticing three gunny bags, P.W.6, as an investigating officer, felt the need to invoke the provisions of [Section 50](#) and thereby provide an opportunity to the appellant for holding any search in the presence of a Gazetted officer or a Magistrate. When once P.W.6 could assimilate the said legal requirement as stipulated under [Section 50](#) of the NDPS Act, we fail to understand as to how principle No.1 in paragraph 25 of the decision reported in Balbir Singh (supra) could be applied. Unfortunately, the trial Court failed to understand the said principle set out in Balbir Singh (supra) in the proper perspective while holding that neither [Section 42](#) nor [Section 50](#) was attracted to the facts of this case.

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23. The aforesaid observations of the above Constitution Bench decision in Baldev Singh (supra) and the three Judge Bench decision in Pawan Kumar (supra), clearly highlight the legal requirement of compliance of [Section 50](#) in its true spirit. It will have to be stated that such compliance of the requirement under [Section 50](#) of holding of a search and seizure in the presence of Gazetted officer or a Magistrate, cannot be an empty formality. In other words, the offer to the

person to be searched in the presence of a Gazetted officer or a Magistrate, should really serve the purpose of ensuring that there was every bona fide effort taken by the prosecution to bring forth the grave offence of possession of narcotic substance and proceed against the person by way of prosecution and thereby establish the truth before the appropriate judicial forum. In the same breath such a course of compliance of [Section 50](#) would also enable the person accused of such a grave offence to be convinced that the presence of such an independent Gazetted officer or a Magistrate would also enable the person proceeded against to demonstrate that there was no necessity for holding any search on him and thereby persuade the concerned Gazetted officer or Magistrate to protect his fundamental right of freedom, from being unlawfully proceeded against. In other words, the purpose of [Section 50](#) was to ensure that on the one hand, the holding of a search and seizure was not a farce of an exercise in order to falsely implicate a person by unscrupulous police authorities, while on the other hand to prevent an accused from committing an offence of a serious nature against the society, warranting appropriate criminal proceedings to be launched and in the event of establishing such offence, conviction and sentence to be imposed in accordance with law. Therefore, such a dual requirement of law prescribed under [Section 50](#) cannot be dealt with lightly by the Courts dealing with the trial of such offences brought before it”.

Therefore, in view of the aforesaid facts and circumstances and without observing anything on the merits of the case and solely for the purpose of considering prayer for bail, this Court is of the considered view that since the offer under Section 50 of the NDPS Act was prima facie defective, this Court has reasons to believe at least at this stage that the petitioner is not guilty of offence. So far as the second ingredient with regard to making a departure from the bar contained under Section 37 of the NDPS

Act is concerned, it is not the case of the State nor it has been argued by learned State counsel that in case the petitioner is released on bail, then he may repeat the offence or may abscond from justice. Therefore, the twin conditions contained under Section 37 of the NDPS Act for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied.

In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

12.10.2022

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No