

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-17333-2022

Date of Decision: 16.8.2022

Sandeep

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rahul Arora, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab

KARAMJIT SINGH, J.

The present petition has been filed under Section 439 Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No.138 dated 30.8.2015 registered for the offences punishable under Sections 22 of NDPS Act at Police Station Makhu, District Ferozepur.

Counsel for the petitioner submits that the petitioner was falsely implicated in the present case and as per allegations appearing on record, he was apprehended by the police party headed by ASI Kuldeep Singh on 30.8.2015 and on his personal search, 100 grams of Alprazolam powder was recovered from the right pocket of his trouser. He further submits that the personal search of the petitioner was not conducted by any Gazetted Officer or Magistrate as per mandatory requirement of Section 50 of NDPS Act and rather personal search of the petitioner was conducted by ASI Kuldeep Singh. He further submits that co-accused Gurjit Singh and Balbir Singh who faced trial were acquitted vide judgment dated 7.2.2020

(Annexure P-4) *inter alia* on the ground that there was violation of the mandatory provisions of Section 50 of NDPS Act.

Present petition is resisted by the State counsel who submits that there was no violation of the provisions of Section 50 of NDPS Act as the petitioner gave his consent and accordingly, he was searched by ASI Kuldeep Singh. However, the fact regarding acquittal of co-accused Gurjit Singh and Balbir Singh has not been disputed by the State counsel.

I have considered the submissions made by the counsel for the parties.

Admittedly, the alleged contraband was recovered on the personal search of the petitioner by ASI Kuldeep Singh thus making it apparent that said search was conducted in derogation of the mandatory provisions of Section 50 of NDPS Act. As per custody certificate, the petitioner is in custody for the last more than one year and three months and is not involved in any other criminal case.

It will take time for conclusion of trial. Thus, no useful purpose is going to be served by keeping the petitioner in custody for any further period.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

(KARAMJIT SINGH)
JUDGE

August 16, 2022

Paritosh Kumar

PARITOSH KUMAR
2022.08.17 12:12
I attest to the accuracy and
authenticity of this order/judgment

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No