

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

CRM-M-18922-2022
Date of Decision:-**21.12.2022**

DARSHAN SINGH @ GYANI

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Ms. Satinder Kaur, Advocate
for the petitioner.

Mr. Chaman Lal Pawar, Addl. A.G. Punjab.

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KARAMJIT SINGH, J. (Oral)

Prayer is for grant of regular bail in case having FIR No.57 dated 12.4.2017 registered under Sections 21/22 of NDPS Act at Police Station Sidhwan-Bet, District Ludhiana.

Status report by way of affidavit of Mr. Satvinder Singh Virk, DSP, Jagraon District Ludhiana (Rural) filed on behalf of the State along with Annexure R-1 is ordered to be taken on record along with the custody certificate.

The counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case and that he is in

custody for the last more than 1 year and 6 months and that as per recovery memo (Annexure P-2), the alleged recovery was effected from the left pocket of the trouser of the petitioner, whereas as per the report submitted by the police under Section 173 Cr.P.C. (Annexure P-4), the said recovery was effected from the right pocket of his trouser. The counsel for the petitioner further submits that the alleged recovery was effected on the personal search of the petitioner without complying with the mandatory provision of Section 50 NDPS Act, just on the ground that the petitioner gave his consent and permitted the Investigating Officer to conduct his personal search. The counsel for the petitioner while referring to ratio laid down in **Arif Khan @ Agha Khan vs. State of Uttarkhand 2018(2) RCR (Criminal) 931 (SC)**, submits that the entire recovery stands vitiated due to non-compliance of aforesaid mandatory provision.

The present petition is contested by the State counsel, who has submitted that in the present case commercial quantity of 480 grams of intoxicant powder containing Diphenoxylate Hydrochloride was recovered from the pocket of trouser of the petitioner by the Investigating Officer. That the said personal search was effected by Investigating Officer after the petitioner reposed confidence and gave his consent to the said police official to conduct his search and the said consent memo is Annexure P-3. The State counsel further submits that there was no violation of the provision of Section 50 of NDPS Act as the personal search of accused was conducted only after getting his consent by the Investigating Officer. The State counsel further contents that the trial is going on and as such no ground is made out to grant bail to the petitioner at this point of time.

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

It appears that in the present case the alleged contraband was recovered from the pocket of the trouser worn by the petitioner, on his personal search, which was effected after getting his consent by the Investigating Officer. Admittedly the personal search was not effected in the presence of any Magistrate or a Gazetted Officer as per the requirement of Section 50 NDPS Act. In **Arif Khan @ Agha Khan's** case (supra), under the similar circumstances the accused was acquitted on account of non-compliance of mandatory period of Section 50 NDPS Act.

In view of the matter, the alleged recovery of contraband from the present petitioner is surrounded by suspicion. The petitioner is in custody for the last more than 1 year and 6 months and this Court is of the view that the petitioner is entitled to be released on bail despite the fact that rigors of Section 37 NDPS Act are attracted to the instant case.

Accordingly the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail and surety bonds to the satisfaction of the trial Court/CJM/Duty Magistrate concerned. However, observations, if any made hereinabove are not to be considered as opinion on the merits of the case.

(KARAMJIT SINGH)
JUDGE

21.12.2022
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No