

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

214

CRM-M-18798-2022

Date of Decision : **May 20, 2022**

JAGTAR SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. K.K.Saini, Advocate
for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

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 case FIR No.46 dated 31.3.2019 under Sections 15/25/61/85 of NDPS Act, registered at Police Station Jalandhar Cantt.

The learned counsel for the petitioner has submitted that the petitioner is in custody from 31.3.2019 which is more than 3 years. The charges were framed on 20.7.2019 and thereafter only one witness has been examined. He submitted that it is a case where allegedly as per the prosecution, the petitioner was travelling in the truck which did not belong to him and there was a recovery of 3 quintals 45 kilograms of poppy husk from the backside of the truck and the petitioner was not even aware of the aforesaid contraband, if any, and he was only a passenger. He further submitted that the petitioner has clean antecedents and he is not involved in any other case. He submitted that the procedure under

Section 50 of NDPS Act was not complied with and was rather violated and has stated that the offer which was given to the petitioner was only for being searched before a Magistrate whereas as per the provisions of Section 50 of NDPS Act the offer has to be made either before the Magistrate or a Gazetted Officer and in case such kind of incomplete offer is made then in view of the law laid down by the Hon'ble Supreme Court in **State of Punjab Vs. Baldev Singh, 1999(6) SCC 172** the offer was totally invalid and the trial gets vitiated. He further submitted that the petitioner is suffering from a number of ailments and in pursuance to the order passed by this Court to ascertain the medical status of the petitioner, the State has now filed an affidavit of Superintendent, Central Jail, Kapurthala in which the report of Associate Professor, Medicine Unit, Guru Nanak Dev Hospital, Amritsar has been attached in which the following has been stated:-

“(1) Q:- What is the latest medical condition of petitioner regarding any ailment including hernia?

Patient is a case of HCV Positive + Alcoholic Liver disease + chronic Liver disease (Decompensated Liver cirrhosis) + Portal Hypertension + Massive Ascites + Hepatic encephalopathy + Umbilical Hernia. Patient's General condition is sick.

(2) Q:- Whether such treatment including surgery can be given to the petitioner in any Govt. Hospital/PGIMER Chandigarh?

Treatment including surgery can be done in Govt. Hospital/PGIMER Chandigarh But at present, Patient is not fit for surgery as patient is having Decompensated

Liver Cirrhosis + Portal Hypertension + Massive Ascites +
Hepatic encephalopathy + Umbilical Hernia.

(3) Q:- Whether the petitioner needs any specialized
faculty from a private Hospital?

As there is department of hepatology/Gastro-surgery in
PGIMER, Chandigarh. So, there is no need of specialized
Faculty from private Hospital.”

The learned State counsel has submitted on instructions from
ASI Harbhajan Lal that it is correct that the petitioner is in custody from
31.3.2019 and only one witness has been examined till date and one
witness has been given up. So far as the medical status of the petitioner
is concerned, an affidavit was filed today in the Court giving the
description of multiple ailments of the petitioner. The learned State
counsel also submitted that it is correct that only a part and incomplete
offer was given to the petitioner in which it was stated that whether he
wants to be searched from a Magistrate but there was no mention with
regard to the Gazetted Officer. The learned State counsel has also
supplied a vernacular copy of the consent memo in which the aforesaid
position has been stated. The said vernacular copy is, hereby, placed on
record as Mark X. The Registry is directed to tag the same at the
appropriate place. He further submitted that it is also correct that the
petitioner is not involved in any other case.

I have heard the learned counsels for the parties.

The petitioner is in custody from 31.3.2019 which is more
than 3 years and only one witness has been examined. As per the learned
counsel for the parties and as per Mark X, the petitioner was given offer

to be searched in the presence of a Magistrate only and there is no mention with regard to any Gazetted Officer and, therefore, there had been a violation of Section 50 of NDPS Act. Apart from the same, the petitioner is suffering from multiple number of ailments which has been so stated in the medical report which has been attached as Annexure R-1 with the affidavit filed by the State. The petitioner is not involved in any other case as per the learned counsel for the parties. It was a case of the petitioner that he was only a passenger in the truck from where there was a recovery of contraband.

Since the total recovery from the truck falls in the category of commercial quantity, this Court would, therefore, consider the affect of Section 37 of NDPS Act. The aforesaid facts and circumstances especially that the offer under Section 50 of NDPS Act was not in accordance with law is required to be considered. The petitioner is not involved in any other case and it is not the case of the State that in case the petitioner is released on bail then he may repeat the offence and may abscond from justice. Therefore, on the basis of the aforesaid facts and circumstances, this Court is more than prima facie of the view that the petitioner is not guilty of the offence. Consequently, both the conditions contained under Section 37 of NDPS Act for making a departure from the bar contained under Section 37 of NDPS Act stand fulfilled. Furthermore, the petitioner is also suffering from multiple number of ailments.

Therefore, in view of the aforesaid facts and circumstances of the present case, this Court deems it fit and proper to grant bail to the

petitioner.

Consequently, the petition is allowed. The petitioner is ordered to be released on bail on furnishing of bail bonds and surety bonds to the satisfaction of concerned Chief Judicial Magistrate/trial Court/Duty Magistrate.

However, anything observed here-in-above shall have no effect on the merits of the case and is meant for deciding the present petition only.

(JASGURPREET SINGH PURI)
JUDGE

May 20, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No