

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

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CRM-M-18928-2022

Date of Decision : **July 12, 2022**

SUMIT @ BODA

.....Petitioner

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. V.K.Gupta, 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 case FIR No.348 dated 16.9.2019 under Sections 21/22 of NDPS Act, registered at Police Station Purani Subji Mandi, Rohtak.

It has been submitted by the learned counsel for the petitioner that the petitioner is in custody from 16.9.2019 which is almost 2 years and 10 months. He submitted that five witnesses have already been examined and it is a case where allegedly the recovery from the petitioner was of 22 bottles of WINCRIX 100 ml each containing the salt of codeine which falls within the category of commercial quantity. He, however, submitted that the bar contained under Section 37 of NDPS Act will not apply to the present petitioner in view of the fact that the entire prosecution case is vitiated on the ground that there has been non-compliance of mandatory provisions of Section 50 of NDPS Act. He referred to the vernacular of the FIR and submitted that the offer which

was made to the petitioner was that he was given an offer for being searched either from a Gazetted Officer or a Magistrate or he himself. The learned counsel submitted that by view of mandatory provisions of Section 50 of the NDPS Act, the offer ought to have been given for being searched either from a Gazetted Officer or from a Magistrate and, therefore, the offer itself was not valid and, therefore, there had been a violation of mandatory provisions of Section 50 of the NDPS Act. He further submitted that the petitioner has already faced incarceration for about 2 years and 10 months and, therefore, he may be considered for the grant of regular bail.

On the other hand, the learned State counsel has stated that it is correct that the petitioner has faced incarceration for almost 2 years and 10 months and he is in custody from 16.9.2019. He has, however, submitted that the petitioner is also involved in three more cases out of which one pertains to the NDPS Act. He has submitted that it is correct that five witnesses have already been examined.

I have heard the learned counsels for the parties.

The petitioner is in custody for almost 2 years and 10 months. However, the learned counsel for the petitioner has raised an argument with regard to non-compliance of provisions of Section 50 of NDPS Act. As per the FIR itself, the offer which was given to the petitioner to be searched from a Gazetted Officer or a Magistrate or the Police Officer himself. It appears that the offer was not a valid offer and, therefore, this Court is of the view that there are reasons to believe that the petitioner is not guilty of the offence atleast at this stage in view of

violation of the mandatory provisions of Section 50 of NDPS Act. It is a settled law that the provisions of Section 50 of NDPS Act are mandatory in nature. Apart from the same, it is not the case of the State counsel that in case the petitioner is released on bail then he may repeat the offence or may flee from justice and, therefore, the second ingredient contained under Section 37 of NDPS Act for making departure from the bar contained under Section 37 of NDPS Act also remain satisfied. Therefore, this Court is of the view that in the present case the bar contained under Section 37 of NDPS Act will not be applicable. So far as the pendency of other cases against the petitioner is concerned, the same can also not create a bar especially in view of the fact that the petitioner has already faced incarceration for almost 2 years and 10 months.

Therefore, considering the totality of the circumstances of the present case, this Court is of the view that the petitioner deserves the concession of regular bail.

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

July 12, 2022
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No