

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

222

CRM-M-27855-2022

Date of Decision : **September 05, 2022**

SOHAN CHAND SHARMA

.....Petitioner

VERSUS

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Mr. Mikhail Kad, Advocate
for the petitioner.

Mr. Amit Rana, Sr. Deputy A.G., Punjab.

JASGURPREET SINGH PURI. J. (Oral)

The present is a second petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 186 dated 11.9.2021 under Sections 22/29 of NDPS Act, 1985, registered at Police Station Sadar Dhuri, District Sangrur.

It has been submitted by the learned counsel for the petitioner that the petitioner is 45 years old person and is not involved in any other case and has clean antecedents. He submitted that the petitioner has been falsely implicated in the present case and is in custody from 11.9.2021 which is almost one year. He further submitted that the investigation of the case has been completed and the challan has been presented. Learned counsel has pointed out towards copy of the consent memo and copy of the challan which was read in the Court wherein when the raid was conducted then as per the prosecution the Police Officer saw the petitioner sitting on a cot and he was having some tablets in his hand and when an offer was given as per the consent memo as well as the challan it was stated by the police Officer that he has a right to part away with the possession of tramadol tablets and to give the possession of the same either to a Gazetted Officer or a Magistrate to which he stated that

he will give the possession of the tablets to him. He further submitted that on the face of it there was a blatant violation of mandatory provisions of Section 50 of NDPS Act. He submitted that the spirit of Section 50 of the NDPS Act is that when the search is to be conducted then an offer is to be made by the Police Officer to the accused that for the purpose of conducting of a search by offering that he has an option to get himself searched in the presence of a Gazetted Officer or a Magistrate whereas the entire objective of Section 50 of the NDPS Act has been defeated by the Police Officer in which he presumed that the petitioner has got tramadol tablets and he is to give the possession of the same to the police Officer and, therefore, even if the alleged recovery was of 1300 tablets of tramadol, the bar contained under Section 37 of NDPS Act will not apply in the present case.

On the other hand, the learned State counsel has submitted that so far as the custody of the petitioner is concerned, the same is correct that he is in custody for almost one year and he is not involved in any other. On a query being raised to the learned State counsel as to why and under what circumstances that instead of giving an offer of getting searched, the so-called offer was of parting away with the tablets of tramadol, the learned State counsel was not able to justify the action of the police.

I have heard the learned counsels for the parties.

The petitioner is in custody from 11.9.2021 which is almost one year. Admittedly, the petitioner is not involved in any other case. A perusal of the vernacular of the consent memo which has been shown to this Court today, prima facie makes it clear that there is a violation of provisions of Section 50 of the Act. It is a settled law that the provisions of Section 50 of the Act are mandatory in nature. The purpose of Section 50 of the Act is to provide a safeguard to the accused that when he is to be searched then he has an option to get himself searched in the presence of either a Gazetted Officer or a Magistrate. However, in the present case, instead of giving an offer to him to get himself searched, the only

thing which the Police Officer had stated was that whether he is ready to part with the possession of tramadol tablets which he is having to the police Officer or not. This Court is of the view that since there is a prima facie violation of provisions of Section 50 of the NDPS Act, the bar contained under Section 37 of NDPS Act will not apply in the present case especially in view of the fact that the petitioner is stated to be 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 or may abscond from justice. Therefore, the twin conditions contained under Section 37 of NDPS Act for making a departure contained therein remain satisfied.

Consequently, the present 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.

September 05, 2022

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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No