

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

CRM-M-40067-2021 (O&M)

Date of decision: 24.03.2022

Ravi @ Kala

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Pankaj Bali, Advocate
for the petitioner.

Mr. Deepak Kumar Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner in FIR No. 92 dated 30.04.2021, registered under Section 21 of the NDPS Act, 1985 at Police Station Munak, Karnal.

On 29.09.2021, the petitioner was granted the concession of interim bail by passing the following order:

“Learned counsel for the petitioner submits that the FIR was got registered by ASI Sandeep Kumar with the allegations that when he, along with other co-officials, was on patrol duty, a young boy was seen coming on foot and on seeing the police party, he suddenly turned back and started running away. He was nabbed by the complainant with the help of other co-officials and on inquiry, he disclosed his name as 'Ravi @ Kala'. Thereafter, having suspicion that the said person was carrying some intoxicant substance, he was given a notice under Section 50 of the NDPS Act.

Learned counsel further submits that in the notice given under Section 50 of the NDPS Act, it is mentioned

that the petitioner has an option to be searched either before a Magistrate or a Gazetted Officer or any Officer from Revenue Department or Excise Department, upon which, the petitioner replied that he is habitual of consuming smack and he is carrying the same in his right pocket of the pant and he wants to be searched through a higher officer of any Revenue Department. Upon this, the consent memo was prepared and a Gazetted Officer was called at the spot and in his presence, 11 grams and 38 milligrams of smack, along with the weight of the small envelope, was recovered.

Learned counsel further submits that the notice under Section 50 of the NDPS Act was defective as there is no provision that an offer can be given to an accused to be searched before an Officer of the Revenue Department or Excise Department.

Learned counsel further submits that the *ruqa* was sent after completing all the formalities, whereas the same was required to be sent immediately on having suspicion when the petitioner was apprehended and, therefore, there is non-compliance of the provisions of Section 42 of the NDPS Act.

Learned State counsel has filed the custody certificate, as per which, the petitioner is in judicial custody for the last about 05 months and though, he is involved in one more case under the NDPS Act but he is on bail in that case and the recovery is of small quantity.

List again on 29.11.2021.

In the meantime, the petitioner is directed to be released on interim bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaqu Magistrate/Duty Magistrate, concerned.

The Superintendent of Police, Karnal is directed to file an affidavit as to how complainant/ASI Sandeep

Kumar, in the notice under Section 50 of the NDPS Act, has mentioned that accused has a right to be searched either before a Magistrate or a Gazetted Officer or any Officer from Revenue Department or Excise Department in violation of the provisions of Section 50 of the NDPS Act.”

In compliance thereof, an affidavit of the Superintendent of Police, Karnal has been filed in Court today, which is taken on record. In the affidavit, it is stated that necessary instructions have been issued to all the SHOs in the District with regard to compliance of earlier directions issued by this Court.

Learned counsel for the petitioner submits that the petitioner is on interim bail since 29.09.2021 and has not misused the same in any manner.

Learned State counsel has not disputed the aforesaid fact.

In view of the above, the present petition is allowed. The order dated 29.09.2021, granting interim bail to the petitioner, is hereby confirmed.

24.03.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No