

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

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**CRM-M-46225 of 2021
Date of Decision: 05.09.2022**

Sanjeev Kumar

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajesh Bansal, 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 the grant of regular bail to the petitioner in FIR No.0236 dated 14.06.2021, under Section 20 of the Narcotic Drugs and Pshychtropic Substances Act, 1985, registered at Police Station Industrial Sector 29, Panipat, District Panipat.

The learned counsel for the petitioner has submitted that the present petitioner is in custody since 14.06.2021 and the allegation against the petitioner was that there was a recovery of 1 kg & 300 grams of *Charas* which is marginally higher than the commercial quantity under the provisions of Section 20 of the NDPS Act. He has submitted that earlier vide orders passed by this Court on 06.04.2022, the petitioner was granted interim bail by this

Court in view of the law laid down by the Division Bench of this Court in Inderjeet Singh @ Laddi and others v. State of Punjab 2014(3) RCR(Criminal) 953. Thereafter when the FSL report was received, he surrendered before the jail authorities. He further submitted that it is the case where the petitioner is not involved in any other case.

Learned counsel for the petitioner further submitted that in the present case an offer was given to the petitioner under Section 50 of the Act which was defective offer and in violation of provision of Section 50 of the Act. He referred to the FIR and also vernacular part of the same and submitted that when the offer was made it was made to be searched either from the gazetted officer or an Executive Magistrate or from himself who was an ASI. He submitted that such kind of offer is not contemplated under Section 50 of the Act and as per Section 50 of the NDPS Act, the offer can only be given with regard to the Magistrate or a gazetted officer and nothing can be added or subtracted in this regard. He further submitted that giving an offer for getting searched from himself forfeits the objective of Section 50 of the Act and in view of the aforesaid provision, the bar under Section 37 of the NDPS Act will not apply in the present case.

On the other hand, learned State counsel has submitted that it is correct that the petitioner is in custody since 14.06.2021 and has surrendered after the FSL report was received by the police. He further submitted that a perusal of the FIR would show that the offer which was given by the ASI was that the petitioner may be searched either by a gazetted officer or any Executive Magistrate or by himself and that is matter of record.

I have heard the learned counsel for the parties.

The petitioner is in custody from 14.06.2021. As per the learned counsel for the parties the petitioner is not involved in any other case and the alleged recovery was 1 kg. & 300 grams of *Charas* which is marginally higher than the commercial quantity. So far as the arguments raised by learned counsel for the petitioner that there is a violation of mandatory provision of Section 50 of the NDPS Act, the same has to be considered in the light of the bar contained in Section 37 of the Act. A perusal of the FIR which has been attached alongwith the present petition as Annexure P-1 would show that when the offer under Section 50 of the Act was given to the petitioner it was stated by the ASI that the petitioner has got right to be searched either by a gazetted officer or by an Executive Magistrate or by himself. The said offer is a defective offer and in violation of the mandatory provision of Section 50 of the Act.

In view of the aforesaid position, this Court at this stage is *prima facie* satisfied that there are reasons to believe that the petitioner is not guilty of the offence since the provisions of Section 50 of the Act have not been complied with.

Apart from the same, the petitioner is not stated to be involved in any other case and has clear antecedents nor it is the case of the State counsel that in case the petitioner is released on bail they he may abscond or flee from justice or repeat the offence, therefore both the ingredients contained under Section 37 of the NDPS Act for making the departure for the bar contained therein remained satisfied.

In view of the aforesaid facts and circumstances, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

(JASGURPREET SINGH PURI)
JUDGE

September 05, 2022
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No