

Sr. No. 218
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.51723 of 2021
Date of Decision: 11.07.2022

Hem Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Prateek Pandit, 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 the grant of regular bail to the petitioner in FIR No.46 dated 31.03.2019, under Sections 15 & 25 of the NDPS Act, 1985, registered at Police Station Jalandhar Cantt, District Jalandhar.

It has been submitted by learned counsel for the petitioner that the petitioner is in custody since 31.03.2019, which is about 03 years and 03 months. He submitted that it is a case where there has been total non-compliance of mandatory provisions of Sections 42 and 50 of the NDPS Act. He further submitted that although the alleged recovery from the petitioner was of 345 kg. Poppy husk, which falls under commercial quantity but the bar contained under section 37 of the NDPS Act would not apply in the present case since there has been violation of mandatory provisions of Sections 42 and 50 of the NDPS act. He also submitted that

this Court on 21.02.2022 had raised a specific query to the State with regard to the contention raised by the petitioner that there was violation and non-compliance of Section 42 of the NDPS Act and in pursuance thereof, an affidavit has been filed by the Deputy Commissioner of Police (Investigation), Jalandhar, in which it has been specifically stated by the aforesaid officer that the provisions of Section 42 of the NDPS Act were not duly complied with. Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in *Karnail Singh Vs. State of Haryana, (2009) 8 SCC 539*, to contend that the provisions of Section 42 of the NDPS Act were mandatory in nature. He has further submitted that apart from the same, there has been a violation of Section 50 of the NDPS Act. He has submitted that a Gazetted Officer was called since it was a case of secret information but the offer in terms of Section 50 of the NDPS Act was improper and invalid offer because when offer was made it was made for being searched before a Magistrate only, whereas as per the provisions of Section 50 of the NDPS Act, it has to be made either before the Magistrate or a Gazetted Officer and therefore, the entire proceedings against the petitioner are liable to be vitiated on this ground as well. Learned counsel has further referred to the orders passed by this Court on 20.05.2022 in CRM-M-18798-2022, whereby the bail of the co-accused namely Jagtar Singh has been allowed and one of the grounds on the basis of which the bail was allowed was that there was a violation of Section 50 of the NDPS Act. He has submitted that in this way, both the mandatory provisions of Section 42 as well as 50 of the NDPS Act have been violated and therefore, has prayed for the grant of regular bail to the petitioner by

also considering long custody of the petitioner.

On the other hand, learned State counsel has submitted that it is correct that an affidavit has been filed by the Deputy Commissioner of Police (Investigation), Jalandhar, dated 23.05.2022, in which it has been submitted that the provisions of Section 42 of the NDPS Act were not duly complied with and the ASI was negligent and careless towards his duty and a departmental action has been recommended to be initiated against him. He has further submitted that it is also correct that the bail petition filed by the co-accused Jagtar Singh has been allowed on the medical ground and also on the ground that there was a direct violation of Section 50 of the NDPS Act and the offer in the present case was not valid offer in terms of Section 50 of the NDPS Act. He has also submitted that the petitioner is involved in two more cases under the NDPS Act.

I have heard learned counsel for the parties.

The petitioner is in custody since 31.03.2019, which is about 03 years and 03 months. When the query was raised by this Court on an earlier date as to whether the mandatory provisions of Sections 42 of the NDPS Act were complied with or not, the Deputy Commissioner of Police has filed an affidavit, in which it has been stated that the provisions of Section 42 of the NDPS Act have not been complied with. The relevant portion of the affidavit is reproduced as under:-

“That it is respectfully submitted that the record of the case and concerned documents were called and on the perusal of the same, Speaking Order was passed by the Commissioner of Police, Jalandhar, vide No.1091-96 dated 04.05.2022, whereby it has been stated that Investigating

Officer i.e. ASI Jaswinder Singh 2132/Jalandhar has not complied with the provisions of Section 42 of the NDPS Act by not informing his Senior Officer about the secret information received and the raid which was conducted in the present case and by not doing so ASI Jaswinder Singh has given evidence of negligence and carelessness towards his duty, for which ACT, Cantt. Jalandhar had recommended the initiation of Departmental Inquiry against Investigating Officer i.e. ASI Jaswinder Singh 2132/Jalandhar, which was approved by the Commissioner of Police Jalandhar and Departmental Inquiry has been initiated under PPR Rule 16.24 (1) order No.03/81 against ASI Jaswinder Singh 2132/Jalandhar (now SI/LR).”

When the bail application of other co-accused namely Jagtar Singh was considered by this Court, the same was allowed not only on the medical ground but also on the ground of non-compliance of Section 50 of the NDPS Act. In the present case, the offer was given only to the other co-accused for being searched through a Magistrate only, whereas under the provisions of Section 50 of the NDPS Act, the option has to be given for being searched not only from the Magistrate but also from any Gazetted Officer. Therefore, the co-accused was granted bail by this Court. In this way, both the mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in the present case. The fact that the petitioner is involved in three more cases, would not become a ground for denial of bail to the petitioner in the present case in view of the aforesaid position. So far as bar contained under Section 37 of the NDPS Act is concerned, the

same would not apply in the present case since in view of the aforesaid facts and circumstances, this Court is of the considered opinion that there are reasons to believe at least at this stage that the petitioner is not guilty of the offence since there appears to be a violation of Sections 42 and 50 of the NDPS Act. So far as the second ingredient for making a departure from Section 37 of the NDPS Act is concerned, it has not been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond from justice or repeat the offence nor any such plea has been taken in the affidavit filed by the State. Therefore, the second ingredient for making a departure from the bar is also satisfied. Therefore, the bar contained under Section 37 of the NDPS Act would not apply in the present case.

Therefore, in view of the aforesaid facts and circumstances of the present case, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety bonds 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 meant for the purpose of deciding the present petition only.

11.07.2022*monika***(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*