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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-30523-2023(O&M)

Date of Decision: 22.08.2023

Neeraj

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. B.S. Rana, Senior Advocate assisted by
Mr. Nayandeep Rana, Advocate, for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in FIR No.499 dated 04.11.2022, under Sections 22 (C), 29, 61, 85 of NDPS Act and Section 201 of IPC, registered at Police Station Sampla, District Rohtak.

2. Learned Senior Counsel for the petitioner has submitted that the petitioner is in custody for 9 months and 15 days and the investigation of the case is complete and challan stands presented. He submitted that petitioner is not involved in any other case and has got clean antecedents and as per the allegations contained in the FIR, the police party had received information that a vehicle was coming from Delhi to Rohtak to supply intoxicants and the allegations in the FIR were only pertaining to one co-accused, namely, Ravinder Singh and there was no information with regard

to the present petitioner. On checking there was an alleged recovery of 60000 tablets of alprazolam and 1449 injections of Buprenorphine from the back seat of the car. The other co-accused namely Ravinder Singh was driving the car whereas the petitioner was sitting on the seat next to the driver seat. Learned Senior Counsel submitted that the petitioner was only a passenger and did not even know with regard to the material, if any, there on the back seat of the car. He submitted that although the recovery from the car was a huge quantity but the entire recovery gets vitiated in view of violation of 50 of the NDPS Act.

3. Learned Senior Counsel while referring to the FIR submitted that the offer was made by the raiding party headed by ASI while offering that the search can be conducted in the presence of himself or any Gazetted Officer/Executive Magistrate and thereafter a Gazetted Officer was called on the spot. Learned Senior Counsel has referred to a judgment of Hon'ble Supreme Court in ***State of Rajasthan versus Parmanand and another, 2014(5) SCC 345*** to contend that the entire recovery gets vitiated once there is a violation of Section 50 of the NDPS Act and no third offer can be given which violates the provision of Section 50 of the NDPS Act and the spirit contained therein. He also referred to the vernacular part of the FIR which was also the same as that of the translated form of the FIR which has been so reproduced in para No.1 of the present petition. He submitted that once the recovery itself gets vitiated, the bar contained under Section 37 of the NDPS Act will not apply to the present case and particularly in view of the fact that so far as the present petitioner is concerned, he was only a passenger and having no criminal background

and therefore, he may be considered for the grant of regular bail.

4. On the other hand, Mr. Naveen Kumar Sheoran, DAG, Haryana has submitted that an affidavit has been filed by the Deputy Superintendent of Police, HSNCB, Gurugram on behalf of the State of Haryana and submitted that the present petitioner was present in the car and since there was a huge recovery from the car itself, the petitioner is not entitled for the grant of regular. He submitted that the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

5. The learned State counsel also submitted that so far as the notice under Section 50 of the NDPS Act which was served upon the petitioner is concerned, there was no discrepancy in this regard but the discrepancy has come up in the FIR itself. He further submitted that so far as the criminal antecedent of the petitioner is concerned, the same is not in dispute and he is not involved in any other case and information in the present case was initially received pertaining to the other co-accused and not pertaining to the present petitioner.

6. I have heard the learned counsel for the parties.

7. The petitioner has already faced incarceration for 9 months and 15 days. The recovery from the car in which the petitioner was travelling undoubtedly falls in the category of commercial quantity under the NDPS Act. Therefore, this Court would consider the prayer of the petitioner in the light of Section 37 of the NDPS Act. A perusal of the FIR which has been reproduced in para No.1 of the petition and also the vernacular of the FIR which has been attached alongwith the present petition would show that the ASI who was heading the team had made an offer under Section 50 of the

NDPS Act to the petitioner for getting him searched from himself or from any Gazetted Officer/Executive Magistrate. The relevant portion of the aforesaid translated form of FIR is reproduced as under:-

“That you have got right under the NDPS Act that you may get conduct your search through me or any Gazetted Officer/Executive Magistrate and the Gazetted Officer/Executive Magistrate may be call at the spot as per your wish for conducting the search of yours and your vehicle”.

8. The Hon’ble Supreme Court in *Parmanand’s case (supra)* discussed this issue with regard to defective offer whereby an offer is made with regard that the person can be searched from himself vitiates the recovery. A perusal of the aforesaid FIR would show that not only first defect was that the offer was made by the ASI that the petitioner can be get searched from himself which is totally in violation of Section 50 of the NDPS Act because there can be no **third person** regarding whom offer can be made and therefore, it *prima facie* violates the spirit and the provisions of Section 50 of the NDPS Act. There also appears to be a second defect in the offer since as per Section 50 of the NDPS Act it can be only through a Gazetted Officer or a nearest Magistrate but in the present case, a rider has been added to the expression Magistrate by expanding it to the scope of Executive Magistrate which is also violation of the provisions of Section 50 of the NDPS Act. The argument which has been raised by the learned State counsel that in the notice under Section 50 of the NDPS Act only Gazetted Officer and Magistrate has been mentioned cannot be considered at this stage in view of the fact that no such document has been placed on record. A perusal of the affidavit which has been filed by the DSP would

show that it appears that some camouflage has been made with regard to chronology of events in para No.2 of the reply in which when the events were being described it has been so stated that incumbents were told that they are suspected and they have prohibited narcotic injections with them and that it is necessary to search you and your vehicle and that a notice under Section 50 of the Act was given to them on which they desired that they want to get them and vehicle search conducted in the presence of a Gazetted Officer. In case there was any wrong noting of any contents of the FIR as so stated by the learned State counsel, then it would have been at least clarified in the affidavit by the DSP but no such clarification has been made. Apart from the above, no such notice under Section 50 of the NDPS Act has been attached alongwith the affidavit. The petitioner has already faced incarceration for 9 months and 15 days and he is stated to be not involved in any other case. Therefore, this Court is of the view that this Court has *prima facie* reasons to believe that the petitioner is not guilty of offence. So far as the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act is concerned, the petitioner is stated to be not involved in any other case nor it is the case of the State counsel that in case the petitioner is released on bail, then he may abscond or repeat the offence. Apart from the above, in the affidavit itself it has been so stated in para No. 10 that the petitioner is not involved in any other case of similar nature. However, in para No.12 it has been stated that in case the petitioner is released on bail, then there are chances that he may misuse the concession of bail by tampering with evidence and influence the material witnesses or may abscond. However, there is neither any material on the

basis of which such an apprehension has been made nor it has been so stated by the learned State counsel in this regard on a query being raised in this regard to him. Therefore, the second ingredient for making a departure from the bar contained under Section 37 of the NDPS Act remain satisfied as well.

9. In view of the above, 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.

10. 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.

22.08.2023

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No