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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31736-2023
Date of decision: 08.12.2023

SOHAIL

...Petitioner

VERSUS

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Mr. Vijesh Sharma, Addl. A.G., 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.196 dated 23.03.2023, under Section 21B of the NDPS Act, registered at Police Station Kotwali, District Faridabad, Haryana.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner is in custody from 23.03.2023 for alleged confiscation of 10.36 grams of *heroin* from him. He further submitted that the petitioner is not involved in any other case and has clean antecedents and the entire procedure adopted by the police party even as per the prosecution was in violation of the provisions of Section 50 of the NDPS Act. He has furnished photocopy of the notice under Section 50 of the NDPS Act in Court today and the same is taken

on record as Mark-‘X’. While referring to the same he submitted that when notice under Section 50 of the NDPS Act was given to the petitioner then it was so offered by the concerned officer to the petitioner that whether the petitioner wants to get himself searched by concerned officer himself or by any Gazetted Officer and on the face of it, said offer was in violation of Section 50 of the NDPS Act. He also submitted that in view of such apparent violation of Section 50 of the NDPS Act, the entire recovery is vitiated. He referred to a judgment of the Supreme Court in *State of Rajasthan versus Parmanand and another, 2014 (5) SCC 345*, in this regard.

3. On the other hand, Mr. Vijesh Sharma, Addl. A.G., Haryana submitted that it is correct that the petitioner is in custody from 23.03.2023 and the recovery from the petitioner is only 10.36 grams of *heroin* and the petitioner is not involved in any other case.

4. I have heard the learned counsel for the parties and also perused the photocopy of the notice under Section 50 of the NDPS Act as supplied by the learned counsel for the petitioner.

5. A perusal of the aforesaid notice under Section 50 of the NDPS Act which has been taken on record as Mark-‘X’ would show that the concerned officer who has given the offer has so stated to the petitioner as to whether the petitioner wants to get himself searched by the concerned officer himself or by any Gazetted Officer. On the face of it, the aforesaid offer is defective and also in violation of Section 50 of the NDPS Act. The Hon’ble Supreme Court in *Parmanand’s case (supra)* has observed as under:-

“19. We also notice that PW-10 SI Qureshi informed the respondents that they could be searched before the nearest

Magistrate or before a nearest gazetted officer or before PW-5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW-5 J.S. Negi by PW-10 SI Qureshi. This, in our opinion, is again a breach of section 50(1) of the NDPS Act. The idea behind taking an accused to a nearest Magistrate or a nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW-10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW-5 J.S. Negi, the Superintendent, who was part of the raiding party. PW-5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the question whether if the respondents had voluntarily expressed that they wanted to be searched before PW-5 J.S. Negi, the search would have been vitiated or not. But PW-10 SI Qureshi could not have given a third option to the respondents when section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of section 50(1) of the NDPS Act. On this ground also, In our opinion, the search conducted by PW-10 SI Qureshi is vitiated.

20. We have, therefore, no hesitation in concluding that breach of section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed.”

6. Therefore, considering the aforesaid totality and circumstances of the present case and also the fact that the petitioner has clean antecedents and

not involved in any other case, this Court deems it fit and proper to grant regular bail to the petitioner.

7. Consequently, the present petition is allowed. The petitioner shall be released on regular bail, if not required in any other case, subject to furnishing bail bonds/surety bonds to the satisfaction of the learned trial Court/Duty Magistrate concerned.

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

08.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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