

215

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-38228-2023

Date of Decision: 11.08.2023

Rajwinder Singh @ Raju

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Imaan Singh Khara, Advocate,
for the petitioner.

Mr. H.S. Sitta, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.102 dated 19.06.2021 under Sections 22(C) of the N.D.P.S. Act, 1985, registered at Police Station Sangat, District Bathinda.
2. Learned counsel for the petitioner has submitted that the petitioner is in custody since 19.06.2021, which is about 2 years and 2 months. He further submitted that the investigation of the case has already been completed and even the charges were framed on 08.03.2022, but only two witnesses have been examined till date. He also submitted that although there has been an alleged recovery of 30,000 intoxicant tablets from the petitioner having salt of *Tramadol* and *Alprazolam* but it is a case where the petitioner has been falsely implicated especially in view of the fact that the petitioner has got clean antecedents and he is not involved in any other case

and it was only because of political rivalry that he has been falsely implicated in the present case. While referring to the FIR and also to the notice under Section 50 of the NDPS Act, which has been attached along with the present petition as Annexure P-2, he submitted that the mandatory provision of Section 50 of the NDPS Act has been violated. He further submitted that a perusal of the notice under Section 50 of the NDPS Act would show that the offer given to the petitioner by the Sub Inspector was that the petitioner has got a right to be searched either from himself or from a Police Gazetted Officer or from a Magistrate and submitted that such kind of offer is absolutely contrary to the provision of Section 50 of the NDPS Act and the recovery itself gets vitiated once the offer is not valid on the face of it. He further submitted firstly, there cannot be a third offer and in the present case, an offer was given that the search can be conducted by the S.I. himself, who had apprehended the petitioner at the initial stage which defeats the purpose of Section 50 of the NDPS Act itself and secondly, the provision of Section 50 of the NDPS Act provides that an offer is to be given for getting searched in the presence of Gazetted Officer or Magistrate, but in the present case, so far as the Gazetted Officer is concerned, it was so stated that the petitioner has a right to get himself searched from a Police Gazetted Officer and therefore, this is a second violation and consequently, the offer itself was totally contrary to Section 50 of the NDPS Act. Therefore, the recovery also gets vitiated. He also referred to the judgment of “*State of Rajasthan Vs. Parmanand & another*”, 2014(5) SCC 345, in this regard.

3. On the other hand, Mr. H.S. Sitta, learned DAG, Punjab submitted that it is correct that the petitioner is in custody since 19.06.2021

which is about 2 years and 2 months and it is also correct that the petitioner is not involved in any other case and has clean antecedents. He submitted that it was a case of spot recovery and the provision of Section 50 of the NDPS Act will not apply.

4. I have heard the learned counsels for the parties.

5. The petitioner has faced incarceration for about 2 years and 2 months and he is stated to be not involved in any other case and has clean antecedents. Although the alleged recovery in the present case is 30,000 tablets of *Tramadol and Alprazolam* but a perusal of the notice under Section 50 of the NDPS Act would show that it *prima facie* appears to be violation of the provision of Section 50 of the NDPS Act. Not only that, instead of options as provided under Section 50 of the NDPS Act are concerned, three options were given to the petitioner in the present case, which is not permissible under the law and surprisingly one of the offer was that the Sub Inspector had stated that the petitioner can get searched from himself which otherwise would defeat the very purpose and spirit of Section 50 of the NDPS Act. Apart from the above, the second option was that instead of Gazetted Officer it was stated that the petitioner can get searched in the presence of a Police Gazetted Officer, which again is in sharp contrast with the provision of Section 50 of the NDPS Act. So far as the argument raised by the learned State counsel that the provision of Section 50 of the NDPS Act will not apply being recovery was as a spot recovery is concerned, the same would also not be sustainable in view of the fact that once a notice has been given under Section 50 of the NDPS Act, then the State cannot turn around and say that it was not required. Reference in this

regard can also be made to the judgment passed by the Hon’ble Supreme Court in *State of Rajasthan Vs. Parmanand & another’s case (supra)*. Therefore, considering the aforesaid position where there is a *prima facie* violation of Section 50 of the NDPS Act, this Court is of the view that there are reasons to believe that the petitioner is not guilty of offence at least at this stage. Apart from the same, it is neither the case of the State nor it has been argued by the learned State counsel that in case the petitioner is released on bail then he may abscond or flee from justice or may repeat the offence especially in view of the fact that the petitioner is not involved in any other case and has got clean antecedents. Therefore, both the ingredients contained under Section 37 of the N.D.P.S. Act, remained satisfied for the purpose of making a departure from the bar contained under Section 37 of the NDPS Act.

6. In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

7. 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.

11.08.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

- | | |
|-------------------------------|--------|
| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |