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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39246-2023
Date of decision: 17.08.2023

GURPREET SINGH

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Ashish Aggarwal, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Senior DAG, Punjab.

JASGURPREET SINGH PURI, J. (Oral)

1. 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.38 dated 30.06.2018, under Sections 21 and 22 of the NDPS Act, registered at Police Station Sarai Amanat Khan, District Tarn Taran, Punjab.

2. Learned counsel for the petitioner has submitted that the petitioner is in custody from 30.06.2018 and his total custody comes out to be about 1 year and 2 months after deducting the period spent on interim bail. He further submitted that the petitioner has no criminal background and he is not involved in any other case. He further submitted that the alleged recovery from the petitioner was 60 grams of heroin and 1050 tablets of Tramadol Calvidol TM-100 SR and it is a case where there has been a total non-compliance of

Section 50 of the NDPS Act. He referred to Annexure P-2 and Annexure P-3 in this regard, wherein an offer was given to the petitioner by ASI that whether the petitioner wants to get himself searched by ASI himself or by any Gazetted Officer or a Magistrate. He further submitted that as per the provisions of Section 50 of the NDPS Act, an offer pertains only to a Gazetted Officer or a Magistrate and if a third offer is given to get himself searched from ASI himself, it totally violates the spirit and the provisions of Section 50 of the NDPS Act and, therefore, the entire recovery gets vitiated for non-compliance of Section 50 of the NDPS Act, which is mandatory. He has referred to a judgment of Hon'ble Supreme Court in *State of Rajasthan versus Parmanand and another, 2014(2) RCR (Criminal) 40* in this regard.

3. On the other hand, Mr. Ramdeep Partap Singh, Senior DAG, Punjab has submitted that it is correct that the petitioner is in custody for about 1 year and 2 months and he has opposed the grant of regular bail to the petitioner on the ground that the recovery from him was 60 grams of heroin and 1050 tablets of Tramadol Calvidol TM-100 SR, which falls in the category of commercial quantity and, therefore, is hit by the bar contained under Section 37 of the NDPS Act. He further submitted that so far as the non-compliance of Section 50 of the NDPS Act is concerned, it is a case of chance recovery and, therefore, the provisions of Section 50 of the NDPS Act will not apply in the present case.

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

5. It is a case where the petitioner has already faced incarceration of about 1 year and 2 months and as per the learned counsel for the parties, no witness has been examined till date. The petitioner is stated to be not involved

in any other case and has no criminal background. Since the alleged recovery from the petitioner falls in the category of commercial quantity, this Court would therefore consider the prayer of the petitioner in the light of Section 37 of the NDPS Act. A perusal of Annexure P-2 and Annexure P-3 would show that ASI made an offer to the petitioner vide Annexure P-2 as to whether the petitioner wants to get himself searched by ASI himself or from any Gazetted Officer or a Magistrate. The aforesaid offer is *prima facie* defective and there is a *prima facie* violation of Section 50 of the NDPS Act and rather defeats the spirit of the aforesaid provisions.

6. The Hon'ble Supreme Court in Parmanand's case (supra) has observed as under:-

“15. 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. 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.”

7. After hearing learned counsel for the parties, this Court is of the view that considering the aforesaid factual position, whereby *prima facie* there appears to be a violation of Section 50 of the NDPS Act and *prima facie* the recovery would thereupon be vitiated in terms of the judgments of Hon'ble Supreme Court. The bar contained under Section 37 of the NDPS Act would not apply in the present case because this Court has *prima facie* reasons to believe that the petitioner is not guilty in offence for the purpose of considering the prayer of the petitioner for grant of regular bail. Apart from the above, it is not the case of the State counsel that in case the petitioner is released on bail, then he may abscond or repeat the offence and, therefore, both the ingredients contained under Section 37 of the NDPS Act for making a departure from the bar contained thereon remain satisfied.

8. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to grant regular bail to the petitioner.

9. Consequently, 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.
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.

17.08.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No