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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-52725-2023  
Date of decision: 20.10.2023

DAMANJEET SINGH@KAKA

...Petitioner

VERSUS

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Munish Puri, Advocate  
for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

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**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.35 dated 11.03.2023, under Section 21 of the NDPS Act, registered at Police Station Sadar, District Pathankot, Punjab.

2. Learned counsel for the petitioner submitted that the petitioner is in custody for 7 months and 10 days and it is a case where there is a blatant violation of provisions of Section 50 of the NDPS Act and the entire recovery stands vitiated. While referring to the FIR itself, he further submitted that when the offer was given to the petitioner, it was specifically stated that he may get himself searched in the presence of any Police Gazetted Officer or any other Gazetted Officer or any Magistrate to which he stated that he may get himself

searched from a Gazetted Officer. He further submitted that under the provisions of Section 50 of the NDPS Act, no third offer can be given especially when the offer is pertaining to a Police Gazetted Officer and no such kind of adjectives can be added by the person who is making offer. He referred to a judgment of the Supreme Court in *State of Rajasthan versus Parmanand and another, 2014(2) RCR (Criminal) 40* and contended that in view of the aforesaid judgment and the law laid down by the Hon'ble Supreme Court, the recovery, if any, gets vitiated and therefore, the petitioner on this ground alone deserves the concession of regular bail. He also further submitted that even otherwise also the entire investigation of the case has already been completed and the allegations against the petitioner were pertaining to 255 grams of *heroin* including a plastic bag and therefore, even otherwise also excluding the plastic bag, the quantity may not fall in the category of commercial quantity. He further submitted that although the petitioner is involved in some more cases but it is the only reason as to why he has been falsely implicated in the present case.

3. On the other hand, Mr. Harsimar Singh Sitta, DAG, Punjab submitted that it is correct that the petitioner is in custody for 7 months and 10 days but he is involved in two more cases under the NDPS Act. He further submitted that so far as the language which has been used by the police officer who had given an offer to the petitioner under Section 50 of the NDPS Act, the same is not in dispute and as per the FIR itself, offer was given pertaining to three persons including one Police Gazetted Officer.

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

5. It is a case where the petitioner has already faced incarceration for 7 months and 10 days. Since the alleged recovery from the petitioner is stated to

be 255 grams of *heroin*, this Court would therefore consider the prayer of the petitioner for grant of regular bail in the light of Section 37 of the NDPS Act. A perusal of the FIR including the vernacular form and also as per the learned State counsel, when the offer was given then instead of giving offer to the petitioner for being searched in the presence of a Gazetted Officer or a Magistrate under Section 50 of the NDPS Act, the offer was pertaining to three persons, which were Police Gazetted Officer or a Gazetted Officer or a Magistrate. 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.”*

6. Therefore, *prima facie* it appears that the aforesaid offer was defective in nature and therefore *prima facie* the entire recovery gets vitiated. However, the aforesaid observations are not meant to be seen as an observation on the merits of the case and can be seen only at the time of trial but it is only for the purpose of considering the bar contained under Section 37 of the NDPS Act and the prayer of the petitioner for grant of regular bail that the aforesaid *prima facie* defective offer would be a ground to have reasons to believe at least at this stage that the petitioner is not guilty of offence. Apart from the above, it is not the case of the learned State counsel that in case the petitioner is released on bail, then he may influence any witness or may tamper with evidence or may flee from justice.

7. Therefore, considering the aforesaid totality and circumstances of the present case, this Court deems it fit and proper to grant regular bail to the petitioner.

8. 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.

9. 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.

20.10.2023  
Chetan Thakur

(JASGURPREET SINGH PURI)  
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No