

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

210

CRM-M-57581-2022
Date of Decision :02.02.2023

Ashwani Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vishal Sharma, Advocate for
Mr. Manoj Kumar Sharma, Advocate for the petitioner
with S.I. Chandeshwar. P.S. City Karnal, District Karnal.

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Harsimran Singh Sethi, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.511 dated 30.06.2021 registered under Sections 20C, 25, 61 & 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station City Karnal, District Karnal.

Custody certificate has been filed by the learned State counsel.

Learned counsel for the petitioner argues that the recovery has been put upon the petitioner and there is a violation of Section 50 of the NDPS Act as no notice was provided to the petitioner. Learned counsel for the petitioner submits that as the petitioner is already behind the bars for the last more than one and a half years, he may kindly be extended the benefit of regular bail.

Learned State counsel on the other hand submits that the allegations being alleged against the petitioner are correct and rather the petitioner is a habitual offender as there is another FIR No.333 dated 30.06.2021 registered against the petitioner under the NDPS Act hence, the prayer of the petitioner for the grant of regular bail may kindly be rejected.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the recovery which has been done is from a bag and not from the petitioner hence, alleged violation of Section 50 of the NDPS Act, so as to seek benefit of regular bail cannot be allowed in the facts and circumstances of the present case, keeping in view the judgment of the Hon'ble Supreme Court of India in **Criminal Appeal Nos.1565-66 of 2019** titled as **State of Punjab vs. Baljinder Singh and another** decided on 15.10.2021 wherein, it has already been held that even if, there is a violation of Section 50 of the NDPS Act, the recovery of the contraband, other than from the person of the accused will not be vitiated. Relevant paragraphs of the judgement are as under:-

“15. The learned counsel for the appellant contended that the provision of [Section 50](#) of the Act would also apply, while searching the bag, briefcase, etc. carried by the person and its non-compliance would be fatal to the proceedings initiated under the Act. We find no merit in the contention of 6 [(2010) 3 SCC 746] the learned counsel. It requires to be noticed that the question of compliance or non-compliance with [Section 50](#) of the NDPS Act is relevant only where search of a person is involved and the said section is not applicable

nor attracted where no search of a person is involved. Search and recovery from a bag, briefcase, container, etc. does not come within the ambit of [Section 50](#) of the NDPS Act, because firstly, [Section 50](#) expressly speaks of search of person only. Secondly, the section speaks of taking of the person to be searched by the gazetted officer or a Magistrate for the purpose of search. Thirdly, this issue in our considered opinion is no more res integra in view of the observations made by this Court in [Madan Lal v. State of H.P.](#) [(2003) 7 SCC 465]. The Court has observed: (SCC p. 471, para 16) “16. A bare reading of [Section 50](#) shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises (see [Kalema Tumba v. State of Maharashtra](#)[(1999) 8 SCC 257], [State of Punjab v. Baldev Singh](#) [(1999) 6 SCC 172] and [Gurbax Singh v. State of Haryana](#) [(2001) 3 SCC 28]). The language of [Section 50](#) is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in Baldev Singh case¹. Above being the position, the contention regarding non-compliance with [Section 50](#) of the Act is also without any substance.”

16. As regards applicability of the requirements under [Section 50](#) of the Act are concerned, it is well settled that the mandate of [Section 50](#) of the Act is confined to “personal search” and not to search of a vehicle or a container or premises.”

Keeping in view the settled principle of law noticed hereinbefore, the argument being raised by the learned counsel for the petitioner qua violation of Section 50 of the NDPS, Act cannot be accepted as recovery in the present case is from the bag.

Further, once the quantity of the contraband recovered is commercial in nature, the bar imposed under Section 37 of the NDPS Act needs to be removed before the claim of the petitioner for the grant of regular bail is considered. Nothing has been brought to the notice of this Court that the allegations alleged against the petitioner are false and even otherwise, the petitioner is involved in another case, which also relates to NDPS Act hence, it cannot be said that in case, the petitioner is extended the benefit of regular bail, he will not indulge in any such activity.

Keeping in view the above, no ground is made out to allow the present petition.

Dismissed.

However, it is made clear that anything observed herein shall not be construed to be an expression of any opinion on the merits of the case.

February 02, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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