

12.
26-09-2024
(ct. no.28)
debajyoti
(rejected)

CRM (NDPS) 1333 of 2024

In re: An application for bail under Section 439 of the Code of Criminal Procedure/483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Berhampore Police Station Case No.1770 of 2023 dated 09-12-2023 under Sections 21(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act.

- A n d -

In the matter of : Roushan Kumar Yadav

.... Petitioner.

Mr. Soumyajit Das Mahapatra,
Mr. Jisan Iqubal Hossain

... For the Petitioner.

Ms. Anasuya Sinha, learned APP,
Mr. Subhasish Datta

... For the State.

Dictated by Arijit Banerjee, J.

The petitioner primarily argues that although his person was searched, the provisions of Section 50 of the NDPS Act, 1985, were not complied with. Therefore, the entire search and seizure process becomes invalid.

Learned State advocate refers to the decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs. Baljinder Singh** reported at **(2019) 10 Supreme Court Cases 473**. In that case, at paragraph 17, the Hon'ble Apex Court held as follows:

“ In the instant case, the personal search of the accused did not result in recovery of any contraband. Even if there was any such recovery, the same could not be relied upon for want of compliance of the requirements of Section 50 of the Act. But the search of the vehicle and recovery

of contraband pursuant thereto having stood proved, merely because there was non-compliance of Section 50 of the Act as far as "personal search" was concerned, no benefit can be extended so as to invalidate the effect of recovery from the search of the vehicle. Any such idea would be directly in the teeth of conclusion (3) as aforesaid. "

In the present case, the contraband items were recovered from a Bolero vehicle. Insofar as that search and seizure is concerned, Section 50 of the NDPS Act would have no application. The latest pronouncement of the Hon'ble Supreme Court on this aspect is perhaps in the case of State of Kerala Vs. Prabhu (Criminal Appeal No.3434 of 2024), wherein previous decisions of the Hon'ble Supreme Court have been referred to. The question of compliance with Section 50 of the NDPS Act would arise only in case there is personal search.

In view of the aforesaid, we do not find any merit in the contention of the petitioner.

In any event, we are of the view that whether or not Section 50 of the NDPS Act was complied with, is a factual question which should be decided at the time of trial.

In view of the commercial quantity of contraband being involved, we are not inclined to allow this application for bail.

The application for bail being CRM (NDPS) 1333 of 2024 is, thus, **dismissed**.

At this stage, the petitioner says that he has raised the claim of juvenility before the learned trial Court. The petitioner shall be at liberty to pursue such claim in accordance with law.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)