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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-31020-2024

Date of Decision :15.07.2024

Gurpreet Singh @ Kalu

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rishu Mahajan, Advocate for the petitioner.

Mr. T.P.S. Chawla, Senior DAG, Punjab.

* * *

Harsimran Singh Sethi, J. (Oral)

In the present 2nd petition under Section 439 Cr.P.C, prayer of the petitioner is for the grant of regular bail in respect of FIR No.80 dated 12.05.2022 registered under Sections 21, 22 and 29 of the NDPS Act, 1985 at Police station City Patti. District Tarn Taran.

As per the allegations alleged in the present FIR, while noticing the Police petrol party on 12.05.2022, the petitioner tried to run away in the opposite direction on his motorcycle but he was apprehended by the said Police party. At the time when the petitioner was apprehended, the police felt that the petitioner has some narcotics substances in his possession and therefore, he was given an option to be searched by a Gazetted Officer.

On the asking of the petitioner, DSP, Sub Division, Patti, who



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was a Gazetted officer, was requested to come at the spot, who came and gave an option to the petitioner that he is a Gazetted officer and is in uniform and intends to search the petitioner but also gave option to the petitioner that he has a right to ask for another Gazetted officer or Magistrate in case, he wants to get himself searched from them, on which option, the petitioner agreed to get searched by the said DSP concerned i.e. the Gazetted Officer present at the spot and upon search, 860 intoxicating capsules with 60 grams of heroin were recovered from the possession of the petitioner. The petitioner is facing trial in the said FIR.

Present petition has been filed by the petitioner seeking regular bail on two grounds. One, that co-accused of the petitioner namely, Sunil Kumar @ Sunila has been granted concession of regular bail by the Coordinate Bench of this Court while passing order in CRM-M-54590-2023 on 30.05.2024 and second that Section 50 of the NDPS Act, 1985 has been violated as instead of two options for personal search, three options were given to the petitioner to get himself searched, which is bad.

Learned State counsel on the other hand submits that the petitioner is a habitual offender and he is involved in other two cases relating to the NDPS Act, 1985 being FIR No.10 dated 25.01.2023 registered as Police station Jhabhal, District Tarn Taran and FIR No.96 dated 20.06.2021 registered at Police Station City Patti District Tarn Taran. Learned State counsel further submits that the co-accused namely, Sunil Kumar @ Sunila was not named in the FIR and nothing has been recovered from him and he was only implicated on the basis of the disclosure statement of the petitioner and that is why, he was granted concession of



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regular bail whereas, the recovery of contraband has been effected from the petitioner.

Learned State counsel further submits that after the petitioner was apprehended by the police party, he was given an option to be searched by the Gazetted Officer or by Magistrate and as opted by the petitioner that he wanted to be searched by a Gazetted Officer, DSP, Sub Division Patti was called, who had again given an option to the petitioner that he being a gazetted officer can search him but in case he wants to be searched by another gazetted officer or Magistrate, he can exercise such option but the petitioner agreed to be searched by the said DSP Sub Division Patti, i.e. Gazetted Officer who reached the spot after which search, recovery of contraband has been effected from the petitioner and hence, it cannot be said that Section 50 the NDPS Act, 1985 has been violated.

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

The first argument which has been raised by the learned counsel for the petitioner is that the similarly situated co-accused Sunil Kumar @ Sunila has been granted concession of regular bail by the Coordinate Bench of this Court.

It may be noticed that the said argument is fallacious. The said co-accused Sunil Kumar @ Sunila was not named in the FIR but has been roped in the present FIR on the basis of the disclosure statement of the petitioner and contraband was recovered from the petitioner and under these circumstances, the concession of regular bail has been given to the said co-accused by the Coordinate Bench of this Court.



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Learned counsel for the petitioner has not been able to substantiate as to how come the petitioner from whom contraband has been recovered is similarly situated to that co-accused Sunil Kumar @ Sunila.

The second argument which is being raised by the learned counsel for the petitioner is that Section 50 of the NDPS Act, 1985 has been violated while effecting recovery from the petitioner.

It is clear from the statement which has been appended with the challan that after being apprehended by the Police party, the petitioner was given an option to be searched either by Gazetted Officer or Magistrate upon which, petitioner opted for Gazetted officer and a Gazetted Officer, DSP, Sub Division, Patti arrived at the spot and the said DSP again had given an option to the petitioner that he can search the petitioner under the provisions of NDPS Act, 1985 but if petitioner wants to be searched by another Gazetted officer or Magistrate, he can exercise his option, on which, the petitioner accepted to be searched by said DSP, Sub Division, Patti i.e. a Gazetted Officer.

Nothing has been presented as to how, Section 50 of the NDPS Act, 1985 has been violated when an option of being searched by another Gazetted Officer or Magistrate was given by the said DSP Sub Division, Patti, who arrived at the spot on the asking of the petitioner only.

Learned counsel for the petitioner submits that the petitioner is behind the bars from the last 01 year and 06 months and trial is not likely to be concluded in near future.

It may be noticed that petitioner is already facing two other cases relating to the violation of NDPS Act, 1985, which clearly shows that



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the petitioner is a habitual offender hence, releasing the petitioner and sending him in general public will not be in large public interest.

Keeping in view the facts and circumstances of the present case, present petition is dismissed with a direction to the trial Court to conclude the trial within a period of 06 months from the next date of haring, even if, the presence of the witnesses is to be secured by passing coercive orders.

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.

July 15, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/Nor