



**215 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.58631 of 2024
Date of decision: 08.05.2025**

SULINDER SINGH @ TINKI

.....Petitioner

Versus

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE H.S. GREWAL

Present: Mr. Gaurav Rana, Advocate and
Mr. R.K. Gupta, Advocate
for the petitioner.

Mr. Manvir Singh Toor, AAG, Punjab.

H.S. GREWAL J. (Oral)

This is a petition for regular bail filed under Section 483 of Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023 in case FIR No.35 dated 15.02.2024
under Section 22 of NDPS Act, 1985 registered at Police Station Garhshankar,
District Hoshiarpur.

2. Custody certificate filed in Court today, is taken on record.
3. The allegations against the petitioner are that he has been apprehended with 15 injections of mark Leegesic Buprenorphine IP/2ml, which falls under the commercial quantity and 20 grams of intoxicant powder, falling into non-commercial quantity.
4. Learned counsel for the petitioner contends that since the alleged contraband was recovered from the pocket of the trouser, the rigours of Section 50 of the NDPS Act, 1985 were attracted and the Investigating Officer himself could not have searched the petitioner and the petitioner should have been produced



before a Gazetted Officer. In order to support his contentions, he has relied upon the judgment of Hon'ble Supreme Court in case "**Arif Khan @ Agha Khan Vs. State of Uttarakhand**", **Law Finder Doc Id#1018496** whereby it is held that as per Section 50 of the NDPS Act, 1985, it is mandatory on the part of authorised officer to make suspect aware of existence of his right to be searched before a Gazetted Officer or Magistrate, if so required by him and this requires strict compliance.

5. I have heard learned counsel for the parties and has gone through the material placed on record.

6. However, in view of Arif Khan case (supra) Hon'ble Supreme Court in case "**Ranjan Kumar Chadha Vs. State of Himachal Pradesh**", **2023 (4) RCR (Criminal) 458** held as under:

"58. We also looked into the decision of this Court in Arif Khan alias Agha Khan v. State of Uttarakhand reported in (2018) 18 SCC 380, wherein it was held that even where the accused after being informed of his right under Section 50, chooses to decline the same, his search by the police must be conducted in presence of either a Gazetted Officer or Magistrate. The relevant observations are as under:-

"4. ... On apprehending the accused, he was informed by the police personnel that he has a legal right to be searched in the presence of a gazetted officer or a Magistrate to which the accused replied that he has faith in the raiding police party and consented to be searched by them.

5. The raiding police party accordingly obtained his consent in writing to be searched by the raiding police party. The raiding police party then searched the accused which resulted in seizure of "charas" weighing around 2.5 kg in quantity from his body.

x x x x

24. We do not agree to this finding of the two courts below as, in our opinion, a search and recovery made from the appellant of the alleged contraband "charas" does not satisfy the mandatory requirements of Section 50 as held by this Court in Vijaysinh Chandubha Jadeja. This we say for the following reasons:

24.1. First, it is an admitted fact emerging from the record of the case that the appellant was not produced before any Magistrate or gazetted officer.



24.2. Second, it is also an admitted fact that due to the aforementioned first reason, the search and recovery of the contraband “charas” was not made from the appellant in the presence of any Magistrate or gazetted officer.

24.3. Third, it is also an admitted fact that none of the police officials of the raiding party, who recovered the contraband “charas” from him, was the gazetted officer and nor they could be and, therefore, they were not empowered to make search and recovery from the appellant of the contraband “charas” as provided under Section 50 of the NDPS Act except in the presence of either a Magistrate or a gazetted officer.

24.4. Fourth, in order to make the search and recovery of the contraband articles from the body of the suspect, the search and recovery has to be in conformity with the requirements of Section 50 of the NDPS Act. It is, therefore, mandatory for the prosecution to prove that the search and recovery was made from the appellant in the presence of a Magistrate or a gazetted officer.

25. Though, the prosecution examined as many as five police officials (PW 1 to PW 5) of the raiding police party but none of them deposed that the search/recovery was made in presence of any Magistrate or a gazetted officer.

26. For the aforementioned reasons, we are of the considered opinion that the prosecution was not able to prove that the search and recovery of the contraband (charas) made from the appellant was in accordance with the procedure prescribed under Section 50 of the NDPS Act. Since the non-compliance of the mandatory procedure prescribed under Section 50 of the NDPS Act is fatal to the prosecution case and, in this case, we have found that the prosecution has failed to prove the compliance as required in law, the appellant is entitled to claim its benefit to seek his acquittal.”

59. However, in our opinion, the observations made in Arif Khan (supra) are in direct conflict with the Constitution Bench decision of Baldev Singh (supra). It appears that the attention of the learned Judges while rendering the decision of Arif Khan (supra) was seemingly not invited to the words “if the person to be searched so requires” used in section 50.

60. Section 50 of the NDPS Act only goes so far as to prescribe an obligation onto the police officer to inform the suspect of his right to have his search conducted either in the presence of a Gazetted Officer or Magistrate. Whether or not the search should be conducted in the presence of a Gazetted Officer or Magistrate ultimately depends on the exercise of such right as provided under Section 50. In the event the suspect declines this right, there is no further obligation to have his search conducted in the presence of a Gazetted Officer or Magistrate, and in such a situation the empowered police officer can proceed to conduct the search of the person himself. To read Section 50 otherwise would render the very purpose of informing the



suspect of his right a redundant exercise. We are of the view that the decision of this Court in Arif Khan (supra) cannot be said to be an authority for the proposition that notwithstanding the person proposed to be searched has, after being duly apprised of his right to be searched before a Gazetted Officer or Magistrate, but has expressly waived this right in clear and unequivocal terms; it is still mandatory that his search be conducted only before a Gazetted Officer or Magistrate.

61. A plain reading of the extracted paragraphs of Arif Khan (supra) referred to above would indicate that this Court while following the ratio of the decision of the Constitution Bench in Vijaysinh Chandubha Jadeja (supra) held that the same has settled the position of law in this behalf to the effect that, whilst it is imperative on the part of the empowered officer to apprise the person of his right to be searched only before a Gazetted Officer or Magistrate; and this requires strict compliance; this Court simultaneously proceeded to reiterate that in Vijaysinh Chandubha Jadeja (supra) “it is ruled that the suspect person may or may not choose to exercise the right provided to him under Section 50 of the NDPS Act”.

7. In view of above, since the petitioner waived his right himself of being searched before a Gazetted Officer and had reposed satisfaction of being searched by the Investigating Officer/ arresting Officer, therefore, there is no infirmity in the search conducted at the time of alleged recovery. This Court does not find any merit in the submissions so made by learned counsel for the petitioner and the petitioner has failed to make out any case for this Court to grant the concession of regular bail.

8. Accordingly, the present petition is dismissed.

08th May, 2025

Sonia Puri

**(H.S. GREWAL)
JUDGE**

<i>Whether speaking/ reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether reportable</i>	:	<i>Yes</i>	/	<i>No</i>