

Law Today Live Doc. Id. 15146

PUNJAB AND HARYANA HIGH COURT

Before: Arvind Singh Sangwan, J.

CRM-M-16374-2020 (O&M)

Decided on: 13.07.2020

Prempal

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. Amardeep Singh, Advocate for the petitioner.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- Narcotic Drugs and Psychotropic Substances, Act, 1985 (61 of 1985), Section 18, 50 – NDPS matter – Joint Memo of recovery – Regular bail -- Consent memo and recovery memo shows that a joint memo was prepared and even a joint consent was taken from the accused persons – High Court has issued guidelines from time to time with regard to investigation to be carried out in the NDPS cases, however, it appears that the investigating officers are not following the same -- Petition allowed -- Petitioner is ordered to be released on regular bail.

(Para 4-7)

Cases referred:

1. State of Rajasthan vs Parmanand and another, 2014(2) RCR (Criminal) 40.
2. Amar Singh Ramjibhai Barot vs. State of Gujarat, 2005 (7) SCC 550.

JUDGMENT

ARVIND SINGH SANGWAN, J. (ORAL) –

1. This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 0094 dated 29.12.2019, registered under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Harike, District Tarn Taran.

2. Learned counsel for the petitioner submits when the petitioner, along with co-accused Anil Kumar, was apprehended, they were given a joint notice and their consent was taken joint, therefore, the proper procedure was not followed in terms of the judgment **“State of Rajasthan vs Parmanand and another”, 2014(2) RCR (Criminal) 40**, wherein it has been held by the Hon'ble Supreme Court that considering the stringent provisions under the NDPS Act, the right available to an accused person under Section 50 of the NDPS Act, to be searched before a Gazetted Officer or a Magistrate, will be frustrated in case clear, unambiguous and individual offer is not given to the accused person. It is further held that joint communication of a right may not be clear or unequivocal as it may create confusion and may result in diluting the right.

3. Learned counsel for the petitioner further relies upon the judgment of Hon'ble Supreme Court rendered in **Amar Singh Ramjibhai Barot vs. State**

of Gujarat, 2005 (7) SCC 550, wherein it has been held that when the recovery is effected from two accused persons and there is no allegation of conspiracy, the same cannot be joined as commercial quantity.

4. Learned counsel for the petitioner further submits that if the recovery effected from the petitioner is taken individually, the same will not fall in commercial quantity.

5. Learned State counsel has placed on record the consent memo and recovery memo, which are taken on record as Mark 'A'. A perusal of these documents shows that a joint memo was prepared and even a joint consent was taken from the accused persons.

6. This Court has issued guidelines from time to time with regard to investigation to be carried out in the NDPS cases, however, it appears that the investigating officers are not following the same.

7. In view of the above, without commenting upon the merits of the case, considering the aforesaid submission of learned counsel for the parties, the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate, concerned.

Petition allowed.
