

# Law Today Live Doc. Id. 15728

**PUNJAB AND HARYANA HIGH COURT**

**Before: Gurvinder Singh Gill, J.**

CRM-M-6383-2020 (O&M)

Decided on: 29.10.2020

Sajan Kumar

Petitioner

Versus

State of Punjab

Respondent

Present:

Mr. S.K. Passi, Advocate for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

*(Proceedings conducted through video conferencing).*

**Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), Section 21, 29 , 50 -- Code of Criminal Procedure, 1973 (2 of 1974), Section 439 -- NDPS case – Regular bail – Non-compliance of Section 50 - - Offer of search through Gazetted Officer of Police Department -- It would be debatable as to whether the provisions of Section 50 of NDPS Act had been complied with in its true letter & spirit especially when the offer extended appears to be given in restricted manner – In any case, the petitioner has been behind bars since last 1 year -- Petitioner ordered to be released on regular bail.**

**(Para 6)**

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**GURVINDER SINGH GILL, J. (ORAL) –**

**CRM-24903-2020**

In view of the reasons mentioned in the application, the same is allowed subject to all just exceptions.

**Main Case**

1. The petitioner seeks grant of regular bail in a case registered against him vide FIR No.194 dated 19.10.2019 under Sections 21 & 29 NDPS Act at Police Station City Patti, District Tarn Taran.

2. The allegations in nut-shell are that the petitioner was found in possession of 270 grams of 'Heroin' which was recovered from the pocket of the 'lower' worn by him. It is further the case of the prosecution that another 40 grams of 'Heroin' was recovered from co-accused Rajiv Kumar who was driving the motorcycle on whose pillion seat the petitioner was sitting.

3. Learned counsel for the petitioner has submitted that it is a case of recovery of contraband from personal search, but somehow the provision of Section 50 NDPS Act had not been complied with in its true letter and spirit inasmuch as a restricted offer was extended to the petitioner to the effect that as to whether he wanted his search to be conducted in the presence of Gazetted Police Officer or before some Magistrate. Learned counsel in this regard has drawn the attention of this Court to the dissent memo (Annexure P-2) & consent memo (Annexure P-3) wherein the word Gazetted Police Officer

has been used. Learned counsel for the petitioner has further submitted that the case of the prosecution also virtually stands demolished on the ground that while as per FIR the contraband allegedly recovered is 'Heroin', but the report of FSL (Annexure P-6) indicates that the contraband is 'Tramadol Hydrochloride'.

4. Opposing the petition learned State counsel has submitted that since the petitioner was caught red-handed while in possession of contraband, no case of bail is made out especially when it is a case of recovery of commercial quantity of contraband. Learned State counsel has however not disputed the fact that the offer as extended to the petitioner in terms of Section 50 NDPS Act is rather restricted type of offer inasmuch as the offer has been restricted to a Gazetted Officer of the Police Department. Learned State counsel has further informed that the petitioner has been behind bars since last more than 1 year.

5. I have considered rival submissions addressed before this Court.

6. It would certainly be debatable as to whether the provisions of Section 50 of NDPS Act had been complied with in its true letter & spirit especially when the offer extended appears to be given in restricted manner of getting searched through Gazetted Officer of Police Department. In any case, since the petitioner has been behind bars since last 1 year, further detention of the petitioner will not serve any useful purpose as conclusion of trial is likely to consume some time. The petition, as such, is accepted and the petitioner is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate/Duty Magistrate concerned.

**Petition allowed.**

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