courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 06/11/2025

(2001) 10 P&H CK 0169

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 23157-M of 2001

Puran Singh — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision: Oct. 3, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 18, 37, 50

Citation: (2001) 4 RCR(Criminal) 787

Hon'ble Judges: K.C. Gupta, J

Bench: Single Bench

Advocate: Namit Sharma, for the Appellant; Sidharth Sarup, AAG, for the Respondent

Final Decision: Allowed

Judgement

K.C. Gupta, J.
Puran Singh has filed this petition for regular bail u/s 439 Cr.P.C. in FIR No. 255 dated 23.4.2001 u/s 18 of the NDPS Act registered at Police Station Panipat.

2. Briefly stated, the facts are that on 23.4.2001, Dhian Singh, Inspector, CIA Staff along-with other police officials was present in a Government jeep near the outer gate of Bus Stand, Panipat. Balbir Singh, Head Constable No. 99 was driving the jeep. The petitioner was seen coming out of the bus stand and on seeing the police party he became perplexed and turned his back swiftly. However, he was apprehended on suspicion. He was served with a notice u/s 50 of the Act and was given an offer to get himself searched in the presence of some Gazetted Officer or a Magistrate. However, he elected to get himself searched in the presence of Magistrate. Consequently, Kewal Krishan Amrohi, District Revenue Officer, Panipat, was called and in his presence the bag, which the petitioner was carrying, was searched. On search, it was found to contain opium. 50 grams of opium was taken out as sample and the remaining on weighment was found to be 1 kg. and 950 grams. The sample packet and the remaining opium were

made into separate scaled parcels and were sealed with the seal of DS. The seal after use was handed over to Chander Mohan, ASI. The articles were taken into possession vide memo attested by the witnesses. Both these packets were also sealed with the seal of KK D.R.O. The petitioner was apprehended.

3. I have heard Sh. Namit Sharma, counsel for the petitioner, Mr. Sidharth Sarup, AAG, Haryana, for the State and carefully gone through the file.

4. Counsel tor the petitioner contended that there is non-compliance with Section 50 of the Act inasmuch as the petitioner had elected to get himself searched in the presence of Magistrate but he was searched only in the presence of Sh. Kewal Krishan, District Revenue Officer, who was not the Magistrate. It is true that no notification has been produced by the prosecution inspite of adjournments given to show that at the time of alleged recovery, Sh. Kewal Krishan was acting as the Executive Magistrate. The learned State Counsel contended that it was not necessary for the police to call the Magistrate and it was enough that the petitioner was searched in the presence of some senior officer. For this contention, he placed reliance upon the authority of Supreme Court Raghbir Singh v. State of Haryana, 1999(1) RCR 573, which supported the above contention of the learned counsel. Para Nds. 8 to 11 of the said judgment read as under :-

"8. The very question that is referred to us came to be considered by a Bench of two learned Judges on 22nd January, 1996 in Criminal M.P. No. 138 of 1996 in SLP (Crl.) No. 184 of 1996 Manohar Lal v. State of Rajasthan. One of us (Verma, J.) speaking for the Bench held (Para 2) :

"It is clear from Section 50 of the NDPS Act that the option given thereby to the accused is only to choose whether he would like to be searched by the officer taking the search or in the presence of the nearest available Gazetted Officer or the nearest available Magistrate. The choice of the nearest Gazetted Officer or the nearest Magistrate has to be exercised by the officer making the search and not by the accused."

9. We concur with the view taken in Manoliar Lal"s case.

10. Finding a person to be in possession of articles which are illicit under the provisions of the Act has the consequence of requiring him to prove that he was not in contravention of its provisions and it renders him liable to severe punishment. It is, therefore, that the Act affords the person to be searched a safeguard. He may require the search to be conducted in the presence of a senior officer. The senior officer may be a Gazetted Officer or a Magistrate, depending upon who is conveniently available.

11. The option u/s 50 of the Act, as it plainly reads, is only of being searched in the presence of such senior officer. There is no further option of being searched in the presence of either a Gazetted Officer or of being searched in the presence of a Magistrate. The use of the word nearest in Section 50 is relevant. The search has to be conducted at the earliest and once the person to be searched opts to be searched in the

presence of such senior officer. It is for the police officer who is to conduct it in the presence of whoever is the most conveniently available Gazetted Officer or Magistrate.

5. Therefore, according to the law laid down by Hon''ble Supreme Court, the option of the nearest Gazetted Officer or nearest Magistrate, has to be exercised by the officer making the search and not by the accused. The Division Bench of Gujarat High Court in Salimuddin @ Jugan N. Ansari v. State of Gujarat, 2000(1) RCR 459 has also relied upon the above mentioned authority of the Hon''ble Apex Court. In the said authority, it has been observed that petition u/s 50 is only of being searched in the presence of some senior officer - there is no further option of being searched in the presence of either a Gazetted Officer or a Magistrate. It was contended by the prosecution that the District Revenue Officer, Sh. Kewal Krishan was a senior Gazetted Officer of the Revenue Department so there was sufficient compliance with Section 50 of the Act.

6. Learned counsel for the petitioner, on the other hand, on the basis of the authority of the Apex Court i.e. State of Punjab v. Baldev Singh, 1999(3) RCR 533 contended that if the search is not conducted as per option of the accused, it would vitiate the conviction and sentence of the accused. In my opinion, there is force in the contention of the learned counsel for the petitioner because the said authority of the Apex Court is by five Hon''ble Judges while the earlier authority cited by the State Counsel i.e. Raghbir Singh''s case (supra) is of three Hon''ble Judges of the Apex Court. It has been further observed in Para No. 27 of the State of Pun jab''s case (supra) that if the suspect requires to be searched in the presence of Gazetted Officer or Magistrate, he shall be searched only in that manner. In the present case, the petitioner had given option to get himself searched in the presence of Magistrate but he was not searched in the presence of Magistrate but was searched in the presence of a Gazetted Officer, so, his search was not proper and the same is illegal and, thus, prima facie, according to the learned counsel, no case was made out.

7. Keeping in view the facts and circumstances of the case and without commenting on the merits of the case, let the petitioner be admitted to bail to the satisfaction of C. J.M., Panipat:

8. Petition allowed.