

(1997) 02 P&H CK 0098

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 18217-M of 1996

Jagdish

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 355

Hon'ble Judges : K.S.Kumaran, J

Advocate : Surinder Lamba, Atul Lakhanpal, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. Petitioner Jagdish son of Biru Ram has approached this Court under Section 439 of the Code of Criminal Procedure for being released on bail. First Information Report No. 160 of 22.8.1996 under Section 18/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been registered against him at Police Station Adampur, Hisar District.

2. According to the First Information Report on 22.8.1996 when Rajinder Singh SubInspector/Station House Officer, Police Station Adampur alongwith other police officials was present at the Bridge of Ravinda Sadalpur, Bhorian Bishnoi for checking, the petitioner Jagdish was coming in Gypsy from the road (from the side of Adampur) and was apprehended on suspicion. His name, address were ascertained. He was informed that he had some intoxicant/opium/poppy husk in his Gypsy and, therefore, his Gypsy was to be searched. He was asked whether he wanted to be searched by the said Assistant SubInspector or before some Magistrate or Gazetted Officer, but he had given it in writing that the Assistant Sub Inspector can search the Gypsy. Accordingly the Gypsy of the petitioner bearing Registration No. DL3C7611 was searched. Under the seat of the Driver 1 kg. of Opium wrapped in Polythene paper was found, out of which 10 gram of poppy was taken out as sample, and they were taken into separate sealed parcels.

3. The contention of the learned counsel for the petitioner is that there has been noncompliance of the mandatory provisions of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and section 100(4) of the Code of Criminal Procedure. According to the learned counsel for the petitioner no independent witness has been associated nor even an attempt made to join one at the time of search and seizure. Learned counsel for the petitioner contends that the petitioner has been falsely involved due to political reasons, and that even on the same day that is 22.8.1996 the wife of the petitioner had sent telegrams to the Hon"ble Chief Justice of this High Court and others that her husband had been picked up falsely by the police and detained in illegal custody. Learned counsel for the petitioner also contends that the brother of the petitioner was also picked up and detained in illegal custody and on petition for Habeas Corpus, a Warrant Officer raided the premises of the Police Station, Adampur and found the brother of the petitioner in illegal custody.

4. The petitioner had earlier approached the Sessions Court, Hissar, and the learned Additional Sessions Judge, dismissed the application for bail.

5. I have heard the counsel for both the sides.

6. This is a case where according to the prosecution even before the search was conducted, the petitioner was asked to say whether he wanted to be searched before the Magistrate or a Gazetted Officer and that he has even given in writing that the Assistant Sub Inspector himself can search him. But the contention of the learned counsel for the petitioner is that no independent witness has been associated and in view of the fact that even on the same day the petitioner's wife had given a telegram alleging that the petitioner was picked up by the concerned police and kept in illegal custody, the petitioner should be released on bail.

7. But, these matters cannot be decided now in this application for grant of bail and they will have to be gone into at the time of trial in detail. Whether any independent witness was there and if so, why he was not associated with the investigation, has to be explained by the investigation at the time of trial. This Court cannot presume at this stage that there was the possibility of joining independent witness and yet the investigating agency did not do so, and on that basis grant bail to the petitioner.

8. The decision in *Amrit Singh v. State of Haryana*, 1990(2) Chandigarh Criminal Cases 588 relied upon by the learned counsel for the petitioner will not be of any help to the petitioner in this case. That decision relates to a case where the judgment had been rendered after trial. The High Court on appeal found that the sole independent chance witness was not examined by the prosecution. This Court also held that search otherwise than before the Magistrate should be an exception and that too for sound and convincing reasons founded upon the materials on record, and that the onus of showing that the person to be searched declined such option was on the prosecution. But in the present case, it is stated

by the investigating agency that the petitioner has given his consent in writing that the ASI could search the Gypsy. The prosecution is yet to lead evidence in this regard. So in these circumstances it cannot now be said that there is no compliance with the provisions of Section 50 of the NDPS Act or Section 100(4) of the Cr.P.C. since no independent witness was associated, and on that basis, grant bail to the petitioner.

9. Therefore, in these circumstances, I find that the petitioner is not entitled to the relief of bail, but, nothing mentioned in this order should be taken as an expression of opinion on merits. The trial Court will dispose of the case on merits uninfluenced by the observations made herein.

10. In the result, the petition is dismissed.