

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-18053-2018

Date of decision : 11.05.2018

Updesh Singh

... Petitioner

Versus

State of U.T. Chandigarh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.N.S. Dandiwal, Advocate
for the petitioner.

Dr.Sukant Gupta, Addl.PP
for U.T. Chandigarh.

AMOL RATTAN SINGH, J.(ORAL)

Pursuant to the order dated May 04, 2018, Dr.Sukant Gupta, learned Addl. P.P. for U.T. Chandigarh, relies upon two judgments of the Supreme Court and two of this Court in ***State of H.P. vs. Sunil Kumar, 2014(2) RCR (Criminal) 139; Durgo Bai and another vs. State of Punjab, (2004)7 SCC 144; Wazir Singh vs. State of Haryana, 2010(1) RCR (Criminal) 480; and Pritam Singh vs. State of Punjab, 1998(4) RCR (Criminal) 425***, three of which are seen to be prior to the judgment of the Constitution Bench of the Supreme Court in ***Vijaysinh Chandubha Jadeja vs. State of Gujarat, (2011) 1 SCC 609***, with the judgment of the Supreme Court in ***State of H.P. vs. Sunil Kumar*** being very obviously after the judgment of the Constitution Bench. However, the said judgment was obviously not brought to the notice of the Court, it not having been referred to in ***Sunil Kumars'*** case.

in question being a chance recovery, with no secret information etc. available with the patrolling party that apprehended the petitioner by chance during the course of such patrolling, the necessity of even making an offer to produce him before a gazetted officer or a Magistrate would not be required, in terms of the judgment in *Sunil Kumars'* case (supra).

Having considered the above, it is to be noticed that in *Jadejas'* case (supra), the Constitution Bench after discussing the entire case law, eventually held that in fact at the first instance an attempt should be made by the detaining officer to produce the accused / suspect before a Magistrate (who enjoys more confidence of the general public), simply in order to lend authenticity to the proceedings.

In *Arif Khan @ Agha Khan vs. State of Uttrakhand (Criminal appeal no.273 of 2007 decided on 27.04.2018)*, the Supreme Court has reiterated the above, despite the fact that in the said case even a consent memo was shown to have been signed by the accused at the time when he was apprehended (the consent given being that he did not wish to be searched before a gazetted officer or a Magistrate).

That being so, without making any comment on the actual culpability of the petitioner or otherwise, which would be gone into by the investigating agency and the competent Court at the appropriate stage, on the basis all the evidence gathered / led, with not even an offer shown to have been made to him that he had a right to be produced before a gazetted officer or a Magistrate (at least as per the FIR a copy of which is Annexure P-1), I consider it appropriate to admit him to bail, upon his furnishing bail bonds and surety bonds to the satisfaction of the learned CJM/Duty Magistrate, Chandigarh.

Ordered accordingly.

Disposed of.

(AMOL RATTAN SINGH)
JUDGE

May 11, 2018.
Davinder Kumar/dinesh

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No