

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.5182 of 2018
Date of Decision: 23.02.2018**

Makhan Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Satnam Singh Gill, Advocate
for the petitioner.

Mr. R.S. Thind, D.A.G., Punjab.

RAJ MOHAN SINGH, J.

[1]. Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.54 dated 14.07.2017, registered under Sections 15/61/85 of the NDPS Act (hereinafter to be referred as 'the Act') at Police Station Kotwali Nabha, District Patiala.

[2]. As per allegations in the FIR, when the police party was on patrolling, at about 8.00 p.m., one young man was taking out his car from a *Kothi* and on seeing the police party, he suddenly reversed his car back. On suspicion, he was arrested and 21 bags of poppy husk were recovered from the car make Optra.

[3]. Learned counsel for the petitioner referred to the site plan prepared by the Police in order to show that the petitioner along with car was apprehended at point 'B' shown in the site plan, which is squarely inside the premises of the house. Since the occurrence took place at 8.00 p.m., the police officer was required to follow the mandatory provisions of Section 42 of the Act for entering and searching the property of the petitioner inside the house.

[4]. Learned counsel also submitted that car make Optra was shown in the FIR, whereas such huge quantity cannot be placed in the car. The photographs of alleged occurrence are suggestive of the fact that some big vehicle was shown to be involved in some incident which took place outside the house.

[5]. Learned counsel also submitted that the alleged recovery does not satisfy the ingredients of Section 52-A of the Act. By making reference to **Gannu and another vs. State of Punjab, 2017(3) R.C.R. (Criminal) 566**; **Union of India vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858 SC** and **Inspector of Police, Narcotics Intelligence Bureau vs. Rajangam (2010)15 SCC 369**, learned counsel further submitted that the person effecting search or seizure should not have proceeded to investigate the offence at a later stage being a complainant and non-compliance of Section 52-A of the Act

has violated the principles of fair and impartial investigation, which otherwise should have been adhered to by the prosecution.

[6]. In view of facts and circumstances, I feel that no firm finding of fact can be recorded at this stage. The contentions raised by learned counsel for the petitioner appear to be debatable with reference to material to be brought on record during trial.

[7]. At this stage, without adverting to the merits of the case, I deem it appropriate to grant concession of regular bail to the petitioner.

[8]. In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

[9]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

February 23, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No