

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

CRM-M No.9921 of 2018

Date of Decision: 27.03.2018

Mohinder Pal

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Sandeep Kumar, 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.175 dated 30.08.2017, registered under Sections 22/61/85 of the NDPS Act (hereinafter to be referred as 'the Act') at Police Station City, Moga District Moga.

[2]. As per prosecution story, the police party was on patrolling duty in search of bad elements and one person was seen coming carrying one black polythene. On seeing the police party, he immediately turned back. He was arrested on the basis of suspicion. On enquiry, he disclosed his name as Mohinder Pal son of Girdhari Lal. On opening the polythene, a white polythene was found in it, in which intoxicant powder was found present. On being weighed, the same was found to be 220

grams. On chemical analysis, the intoxicant power was detected to be containing Alprazolam to the extent of 0.14%.

[3]. Learned counsel for the petitioner submitted that the Investigating Officer himself is an accused in one corruption case, besides accused in one NDPS Act. Criminal case in NDPS Act was registered against him in Police Station City Moga on 17.11.2017 and a case under Corruption Act was lodged on 17.11.2017 itself in Vigilance Bureau Range, Ferozepur.

[4]. Learned counsel by referring to the antecedent character of the Investigating Officer, challenged the involvement of the petitioner in the present case. The investigating Officer was under legal obligation to effect search in the presence of gazetted officer or the Magistrate. The representative sample was supposed to be drawn in terms of Section 52-A of the Act as per mandatory requirement. The Investigating Officer, who effected the search and seizure was not supposed to proceed with the case as he falls under the category of the complainant.

[5]. Learned counsel by relying upon upon **Gurjant Singh @ Janta vs. State of Punjab, 2013(4) R.C.R. (Criminal) 874** submitted that when the Investigating Officer on noticing contraband felt the need of invoking Section 50 of the Act and

gave offer to the accused, then Principle No.1 as held in para no.25 of **State of Punjab vs. Balbir Singh, 1994(1) R.C.R. (Criminal) 736** would not apply. It was imperative on part of the Investigating Officer to comply with the mandatory requirements of Section 50 of the Act.

[6]. Learned counsel further submitted that the Investigating Officer himself was of tainted image and was not legally competent to carry out further investigation of the case being the complainant. Learned counsel referred to the ratio of **Gannu and another vs. State of Punjab, 2017(3) R.C.R. (Criminal) 566.**

[7]. Learned counsel also submitted that the provisions of Section 52-A of the Act are mandatory and non-compliance of the same would render the prosecution story to be nugatory. Learned counsel relied upon **Union of India vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858 SC.**

[8]. Having considered the material on record in the light of aforesaid precedents, at this stage, I find that the issues are debatable in respect of factual matrix of the case and complicity of the petitioner.

[9]. At this stage, without adverting to the merits of the case and keeping in view the stringent provisions of the NDPS Act, I

deem it appropriate to grant concession of regular bail to the petitioner, who is in custody since 30.08.2017.

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

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

March 27, 2018	(RAJ MOHAN SINGH)
Atik	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No