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

**CRM-M No.12842 of 2020(O&M)
Date of Decision: 09.06.2020**

Major Singh

.....Petitioner

Vs

Sate of Punjab

.....Respondent

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

Present: Ms. G.K. Mann, Advocate
for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.0126 dated 20.08.2019 registered under Sections 21/22 of NDPS Act at Police Station Maqboolpura, District Police Commissionerate Amristar.

As per prosecution case, the petitioner was one of the co-occupants of a scooter owned and possessed by Sahib Singh. At the time of arrest, Sahib Singh was driving the scooter and his wife Jyoti was also sitting as a co-pillion rider along with

the petitioner. From the dicky of the scooter, 10 grams of heroin and 900 loose tablets containing salt Alprazolam were allegedly recovered. As per analysis by FSL, the contraband was found to be of commercial quantity. Co-accused Jyoti was granted interim bail till receipt of FSL report. FSL report has already been received but the bail of Jyoti has not been cancelled so far and she is appearing in Court regularly.

Learned State counsel states that the case regarding bail of Jyoti is fixed for 06.07.2020.

Perusal of the record produced by the State would show that a joint offer was given to the accused in which they have refused to be searched before the Magistrate or Gazetted Officer.

Learned counsel for the petitioner submits that there was no valid offer given to the petitioner.

In **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874**, the Hon'ble Supreme Court after considering the ratio of **State of Punjab Vs. Balbir Singh, 1994(1) RCR (Criminal) 736**, **State of Punjab Vs. Baldev Singh, 1993(3) RCR (Criminal) 533** and **State of H.P. Vs. Pawan Kumar, 2005(92) RCR (Criminal) 622**, held that when the Investigating Officer on noticing contraband, felt the need of

invoking Section 50 of the NDPS Act and gave offer to the accused, then Principle No.1 as held in para No.25 of **Balbir Singh's case (supra)** would not apply. Once notice under Section 50 of the NDPS Act was given to the accused, then it was imperative on the part of the Investigating Officer to comply with the requirement of Section 50 of the NDPS Act mandatorily. The alleged reposing of faith in the Investigating Officer is also hit by the ratio of **State of Rajasthan Vs. Parmanand and another, 2014(2) RCR (Criminal) 40** and **Vijaysinh Chandubha Jadeja Vs. State of Gujarat, 2010(4) RCR (Criminal) 911.**

Evidently, in view of legal position, it would be debatable as to whether compliance of Section 50 of the NDPS Act would be required in this case or not. The arrest of the petitioner from the spot would be debatable as the scooter itself was being driven by the true owner of the vehicle and his wife was co-occupant thereon.

Learned State counsel on instructions from Investigating Officer states that the recovery effected from the scooter is of commercial nature and Section 37 of the NDPS Act is attracted. Petitioner being co-occupant of the vehicle would be deemed to be in conscious possession of the contraband. Petitioner is in custody since 20.08.2018. Challan has already

been presented. Charges have not been framed so far.

In view of aforesaid position, it would be debatable as to whether compliance of Section 50 of the NDPS Act is required to be mandatorily followed in such circumstances.

In view of facts and circumstances and without meaning anything on merits of the case, it would be just and appropriate to grant regular bail to the petitioner, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

Nothing expressed hereinabove shall be construed to be an expression of any opinion on merits of the case.

June 09, 2020

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Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No