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

CRM-M No. 15530 of 2020 (O&M)
Date of Decision: 24.07.2020

Sagar Arora

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kulbhushan Raheja, Advocate,
for the petitioner.

Mr. Saurav Khurana, D.A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.114 dated 29.06.2019 under Section 21/29 of NDPS Act registered at Police Station Tibba, District Ludhiana.

According to the prosecution story, petitioner was driving the Activa scooter and Nitin was pillion rider. The FIR was registered on the basis of secret information. 600 grams of Heroine was allegedly recovered from the petitioner.

Learned counsel for the petitioner submits that Section 42 of NDPS Act has not been complied with as the S.S.P. was informed telephonically. The information was not

reduced into writing and was never sent to higher officers within 72 hours.

The ratio of **Sekhar Suman Verma vs The Superintendent of NCB and another, Criminal Appeal No.317 of 2006, decided on 26.06.2016** would not apply in the present case as in the aforesaid case, the Officer was working under Section 41 of the NDPS Act. The Gazetted Officer was not working as Investigating Officer. Requirement of Section 42 of the Act can be considered to be directory only in those cases where the Investigating Officer has no time to record the information and where there was immediate apprehension of absconding of the accused.

The action of the police officers on the basis of unrecorded information would be debatable.

CRM-M No.52253 of 2019 titled 'Nitin vs State of Punjab' was dismissed as withdrawn on the basis of submission made by learned counsel for the petitioner therein. The said petition was not decided on merits.

Learned State counsel, however, opposes the prayer on the ground that the Superintendent of Police himself came at the spot and thereafter, conducted the proceedings as per parameters of NDPS Act, therefore, there was no need to comply with requirement of Section 42 of the Act.

In view of precedent on the point viz **Sheo Ram vs State of Punjab, 2015(4) RCR (Criminal) 744** and **Sukhdev Singh vs State of Haryana, 2013(2) RCR (Criminal) 234**, it would be debatable as to the complicity of the petitioner on the basis of legal parameters.

At this stage, without meaning anything on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

24.07.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No