

202

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

CRM-M No. 15828 of 2020 (O&M)

Date of Decision: 24.07.2020

Harbhajan Singh @ Bhajji

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sangram S. Saron, 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.58 dated 28.07.2019 under Section 15 and 29 of NDPS Act registered at Police Station Behram, District Shaheed Bhagat Singh Nagar.

FIR was registered at 12.57 AM when the police party was present at Check Post on Phagwara bypass Road in connection of checking of vehicles. A Ford Fiesta car was seen coming from Phagwara side and was being driven by a person wearing turban. A clean shaven person was sitting on the

passenger seat. When the car was signalled with a torch light to stop, driver of the car drove away the car with high speed towards Behram. The car was chased by the police party. About 1 Km from the naka, the abandoned car was found parked on an unconstructed path of Highway road. Rear glass and bumper of the car were damaged. The car was checked and one plastic bag was found in the trunk. On opening and checking, 35 Kgs of poppy husk was recovered.

According to prosecution itself, ASI Nand Lal was competent to investigate the case under NDPS Act. He was not present at the spot. He was informed. After his arrival, recovery memo was prepared. Perusal of recovery memo would show that FIR No. is appearing at the top of it i.e. FIR No. 58 dated 18.07.2019 under Section 15/29/61, 1985 NDPS Act Police Station Behram, District SBS Nagar. Names of police officers are typed, whereas name of Nand Lal has not been typed on recovery memo but he is shown to have signed the same only. Insurance papers were allegedly recovered from the car and on the basis of those papers, ownership of the car was found to be in the name of the petitioner.

Learned counsel for the petitioner vehemently submitted that recovery of 35 Kgs of poppy husk from the car is doubtful in view of appearance of FIR No. in the recovery memo itself. Secondly, as per prosecution case itself, only Nand Lal

was competent to investigate the case and he was not present at the time of recovery, rather his name was not typed in the recovery memo, but only signature was obtained at the end. Prosecution story is in two parts. First part is relating to alleged recovery of 35 Kgs of poppy husk which is doubtful. Second part is based on secret information to the effect that petitioner was waiting for someone in Village Bahua and was apprehended in view of said secret information after conducting raid. Prosecution story is silent with regard to time and distance between the place of alleged disclosure vis-a-vis distance where the petitioner was found in village Bahua. The secret information has not been reduced into writing. Section 42 of the Act in all parts has not been complied with.

Learned counsel further submitted that in case of search of the house between sunset and sunrise, the occurrence should have been witnessed by atleast two independent witnesses in terms of Section 100(4) Cr.P.C. There is non-compliance of Section 42 of the Act.

Learned counsel places reliance upon **Karnail Singh vs State of Haryana, Crl. Appeal No.36 of 2003 and 606 of 2004 decided on 29.07.2009** and **Sukhdev Singh vs State of Haryana, 2013(2) RCR (Criminal) 234** to contend that Section 42 of the Act is mandatory in all parts.

Learned State counsel, on the other hand, opposed

the prayer on the ground that recovery of 115 kg of poppy husk is hit by Section 27 of the Evidence Act. The recovery is based on disclosure statement of the petitioner himself.

Petitioner is in custody since 28.07.2019.

It would be debatable as to the complicity of the petitioner in the given facts and circumstances of the case.

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