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

CRM-M No. 16336 of 2020 (O&M)
Date of Decision: 29.07.2020

Sanjay Kumar

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Meenu Goel, Advocate,
for the petitioner.

Mr. Rana Harjasdeep, D.A.G., 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.36 dated 05.03.2020 under Sections 22, 61 & 85 of NDPS Act registered at Police Station Gidderbaha, Punjab.

As per allegations in the FIR, SI Ramanjeet Kaur was present in the police station. MHC of police station informed her that ASI Gurmeet Singh along with Constable Navdeep Singh has apprehended two persons with transparent envelope suspected to be containing intoxicant substance. The

Investigating Officer along with police party reached at the spot and found that Hardeep Singh was having the contraband. After due procedure, 500 tablets of CLOVIDOL in 50 strips each having 10 tablets were recovered from Hardeep Singh. Search of transparent envelope in the hand of petitioner led to recovery of 790 tablets of Prazolam in 79 strips each having ten tablets. Form M-29 was prepared by the police party at the spot and recovered articles were taken into police possession.

Learned counsel for the petitioner contends that the petitioner is young boy of 24 years. He has represented Under-19 team of Gidderbaha in Wrestling and got 1st position on number of occasions. Petitioner is not involved in any other case.

Co-accused namely Hardeep Singh has been granted regular bail by the Court of Sessions vide order dated 12.06.2020.

Prosecution story is silent with regard to mandatory compliance of Section 52-A of NDPS Act. Recovery from transparent bag would also give rise to debatable issue as the person in trade of contraband would not carry such contraband in a transparent bag so as to expose the same in public domain.

Learned State counsel on instructions admits that the

contraband was recovered from the transparent bag. Grant of bail to the co-accused would not help the case of the petitioner as the recovery from Hardeep Singh is non-commercial in nature, whereas recovery from the petitioner is commercial in nature.

Having heard learned counsel for the parties, it can be seen that the alleged recovery is from a transparent bag. Form M-29 was prepared at the spot. Thereafter, the contraband (intoxicant tablets) was taken into police possession through recovery memos. Compliance of Section 52-A of NDPS Act would be debatable.

Petitioner is not involved in any other case according to the Custody Certificate produced by learned State counsel.

Presence of alleged contraband in a transparent bag would make the case debatable because in case of a person involved in the business of contraband, he would not carry such transparent bag so as to expose the same in public domain. Factum of the contraband being present in the transparent bag is not in dispute nor it is alleged that the contraband was wrapped in some opaque wrapper thereby making the same to be invisible, even if the same is in a transparent bag.

Reliance can be placed on **Binder Kaur @ Goga vs State of Punjab in CRM-M No.4584 of 2020 decided on**

06.02.2020, wherein it has been observed that a person in trade of such type of contraband would not do the trading in a transparent bag.

In the present case, there is no antecedent behaviour of criminal activity of the petitioner and he is not involved in any other case.

Challan has already been presented and charges have been framed, but no prosecution witness has been examined so far.

Petitioner is in custody since 05.03.2020.

Owing to the situation arising out of pandemic COVID-19, 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.

29.07.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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