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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.17524 of 2020 (O&M)
Date of Decision: 14.09.2020

RAJEEV KUMAR @ GAGGI

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.S. Rana, Advocate
for the petitioner.

Mr. H.S. Sullar, 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.141 dated 03.11.2018, registered under Section 22 of the NDPS Act (Act No.61 of 1985 dated 16th September 1985) Police Station Doraha, District Khanna.

During pendency of the petition, learned counsel for the petitioner also filed CRM No.18813 of 2020 for grant of interim regular bail. Notice of the application was given to the respondent-State.

A short reply by way of affidavit of Rajiv Kumar Arora, PPS, Superintendent, Central Jail, Ludhiana on behalf of respondent/State has been filed. The same is taken on record.

According to the affidavit, the inmates have been tested positive and they are being kept as per protocol. They are transferred to Level-I COVID Care Centers and no COVID-19 patient is kept inside the jail. It is only after completion of quarantine period in Level-I COVID Care Centers, these COVID-19 positive patients inmates are tested again and only after their negative reports, they are re-admitted in the jail.

In view of aforesaid, I have considered the main petition on merits.

Learned counsel for the petitioner submitted that even in the case of chance recovery, if offer is given to the suspect in terms of Section 50 of the NDPS Act, then it becomes mandatory to comply with the requirements under Section 50 of the Act. In the instant case, the suspect allegedly reposed faith in the Investigating Officer and thereafter Investigating Officer proceeded to recover the contraband.

Learned counsel by placing reliance upon **Gurjant Singh @ Janta vs. State of Punjab, 2013(4) RCR (Criminal) 874**, further submitted that 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.

Learned State counsel on instructions from the Investigating Officer submitted that out of 13 prosecution witnesses, 4 witnesses have been examined and 5 have been given up. Owing to the situation arising out of COVID-19 pandemic, there is no progress in the trial of the case. Petitioner is in custody since 16.07.2020 after availing an interim bail.

Looking to the aforesaid facts and in view of the

situation arising out due to COVID-19 pandemic and without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, petition is allowed. Petitioner is ordered to be released on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court/concerned Duty Magistrate.

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

(RAJ MOHAN SINGH)
JUDGE

September 14, 2020

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No