

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21380-2020(O&M)

Date of Order: 12th November, 2020

Pardeep Singh ...Petitioner

Versus

State of Punjab ...Respondent

Present: Mr. Kawalpreet Singh Virk, Advocate
for the petitioner.
Mr. Luvinder Sofat, AAG, Punjab

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

ANIL KSHETARPAL, J.

This petition, under Section 439 of the Code of Criminal Procedure, has been filed by the petitioner seeking bail pending trial in a criminal case arising from FIR No.326, dated 16.12.2019, registered under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985, at Police Station Patran, District Patiala.

As per the case of the prosecution, a police party led by ASI Jarnail Singh, was on a routine patrolling duty when a secret information was received about the transportation of dried poppy pods, by the accused, in a car. The Assistant Sub Inspector Jarnail Singh sent a ruqa/communication to his superiors and requested for deputing enabled officer for further investigation. On receipt thereof, the afore-mentioned FIR was registered and the Inspector of Police, along with other officials reached at the spot and took charge. ASI Jarnail Singh was relieved and thereafter on being intercepted, 120 Kgs of dried Poppy pods were recovered from the car, occupied by the petitioner and co-accused.

Learned counsel for the petitioner has submitted that there was a total non-compliance of Section 42 of the Narcotic Drugs and Psychotropic Substance Act, 1985 and therefore, no case against the petitioner is made out and hence, the petitioner should be granted the concession of bail. He relied upon the judgment passed in **Karnail Singh vs. State of Haryana (2009)8 SCC 539.**

On the other hand, Mr. Luvinder Sofat, Assistant Advocate General, Punjab, has submitted that in the present case, Section 42 of the Narcotic Drugs and Psychotropic Substance Act, 1985, would not be applicable as the search was carried on a road i.e. public place. He further submitted that ASI Jarnail Singh, on receipt of secret information, had forwarded a communication to his superiors and thereafter, the concerned Inspector, after recording the FIR, reached at the spot. He further submitted that when the information comes to the knowledge in the course of regular patrolling, the compliance of Section 42 of the Narcotic Drugs and Psychotropic Substance Act, 1985, is not necessary. He further submitted that even delayed compliance is permissible as interpreted by the 5 Judge Bench of the Supreme Court in Karnail Singh (supra). He further submitted that when the police party reached the police station alongwith the accused and narcotics, a report was sent to the Deputy Superintendent of Police.

At this stage, it would not be appropriate to express any final opinion. Still further while considering the request for grant of bail, the court is not expected to analyze the material at micro level. Still further, on careful reading of the 5 Judge Bench judgment in Karnail Singh (supra), it is apparent that after noticing the conflict of opinion amongst two Benches

of equal strength, it was held that the delayed substantial compliance is sufficient.

The alleged recovery in the present case falls in the category of commercial quantity. On completion of the investigation, the report under Section 173 Cr.P.C, has already been filed before the court.

In view thereof, no ground to grant the concession of bail to the petitioner is made out.

Dismissed.

However, the observations made by this court while passing this order shall not be construed as expression of the final opinion on applicability of Section 42 of the Narcotic Drugs and Psychotropic Substance Act, 1985.

12th November, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking Yes/NO

Whether reportable YES/NO