

206

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

**CRM-M No.25144 of 2019(O&M)
Date of Decision: 27.10.2020**

Ramesh Kumar

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

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.479 dated 07.08.2015 registered under Section 21-A of the NDPS Act at Police Station Ratia, District Fatehabad.

Learned counsel for the petitioner submits that 15 bottles of Rexcof, containing 100 ML each were allegedly recovered from the petitioner. The bottles were not having any batch number. The entire bulk was not sent to FSL, rather one

bottle was sent for analysis. Earlier CRM-M No.44278 of 2016 was not decided on merits. In the said petition, the petitioner was granted interim bail vide order dated 15.10.2016. He remained on interim bail for about 2 years and thereafter, it was rejected on 14.12.2018 after decision of the reference in the context of sending the entire bulk to FSL.

Learned counsel for the petitioner further submits that as per FIR itself, the police even after apprehending the petitioner on the basis of suspicion, proceeded to issue notice to the petitioner under Section 50 of the NDPS Act. Even in case of chance recovery, if offer is given in terms of Section 50 of the NDPS Act, then it becomes mandatory to comply with the requirement of Section 50 of the NDPS Act. After giving offer to the petitioner, the statement of the petitioner was recorded to the effect that he had faith in the Investigating Officer to proceed further to effect search and seizure.

By placing reliance upon **Gurjant Singh @ Janta vs. State of Punjab, 2013(4) RCR (Criminal) 874**, learned counsel 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 Sub Inspector Devinder Singh states that petitioner is in custody since March 2019. Challan has been presented. All the prosecution witnesses have been examined and now the case is fixed for 14.01.2021 for defence evidence.

In the event of leading defence evidence, the case may get further delayed.

In view of aforesaid, nature of contraband falling under commercial category would be debatable. The investigation conducted by the police on the basis of alleged reposition of

faith would also remain debatable.

In view of aforesaid, without adverting to the merits of the case and owing to the situation arising out of pandemic COVID-19, I deem it appropriate to enlarge the petitioner on regular bail. Petitioner is ordered to be released on regular 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.

October 27, 2020

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No