

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

212

CRM-M-32631-2019
Date of Decision 13.03.2020

JASWINDER SINGH

..... Petitioner

V/S

STATE OF PUNJAB

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. D. N. Ganeriwala, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

SUDIP AHLUWALIA J. (ORAL)

[1] The instant petition has been filed under Section 439 of the Code of Criminal Procedure seeking regular bail in case FIR No.36 dated 21.02.2019 under Section 15 of NDPS Act, 1985, at Police Station Nathana, District Bathinda.

[2] In this case, the petitioner was arrested on 21.02.2019. It has been contended on his behalf that he should not be kept in further detention for an indefinite period particularly in view of the fact that the requisite compliance under Section 42(I) of the NDPS Act was not done by the Investigating Officer, inasmuch as not only he admitted in his deposition as PW-2 before the Ld. Trial Court that “*we did not send intimation to Higher Authority under Section 42 of the NDPS Act*”, but even otherwise the Ruqqa sent by him to the Police Station cannot be considered as substantial compliance since the Investigating Officer himself was holding the rank of Sub Inspector whereas Ruqqa, on the basis of which the FIR was lodged, was received by an Officer lower in rank, namely ASI- Kulwinder Singh.

[3] In such circumstances, the prosecution case would be hit by the Division Bench decision of this Court in '**Sarabjit Vs. State of Punjab**' - **CA No.D-947-DB of 2008**, wherein conviction of the accused had been set aside particularly in view of the fact that the Ruqqa even in that case was sent to an Officer holding a rank of ASI, which was subordinate to that of the concerned witnesses SI-Gurbaj Singh.

[4] In this view of the matter and considering the long detention undergone by the petitioner as also the fact that he is not reported to be involved in any other case under the NDPS Act pertaining to recovery of any contraband above the commercial quantity and also considering that so far, only 3 out of the 11 prosecution witnesses have been examined and the trial is likely to take some more time, the present petition is allowed and the petitioner is ordered to be released on regular bail, subject to appropriate terms and conditions to the satisfaction of the Ld. Trial Court/Duty Magistrate, concerned.

[5] Disposed off.

[6] Needless to mention that any observations made in this order shall have no bearing on the final outcome of the trial and Ld. Trial Court shall decide the matter independently on its own merits.

(SUDIP AHLUWALIA)
JUDGE

13.03.2020
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No