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

CRM-M No. 39265 of 2019
Date of Decision: 12.11.2020

Kulwinder Singh @ Kinda

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranbir Singh Sekhon, Advocate,
for the petitioner.

Ms. Jaspreet Kaur, A.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.53 dated 26.06.2019 under Sections 21/22 of NDPS Act registered at Police Station Lakho Ke Behram, District Ferozepur.

FIR was registered on the basis of secret information. 1000 tablets of Clovidol-100 SR, 200 tablets of Fevidol-100 SR and 100 grams of Heroine were allegedly recovered from the petitioner.

Learned counsel for the petitioner submitted that as per Form M-29 prepared by the police, two strips each

containing 10 tablets total 20 tablets of Clovidol-100 SR were sent for chemical analysis from first parcel of 100 strips. Two strips each containing 10 tablets total 20 tablets from second parcel of 20 strips were sent for analysis. 5 grams of brown coloured powdery material was also sent as parcel No.3.

In the FIR, there is no mention about batch number, date of manufacturing, date of expiry of the contraband.

The average quantity of ingredients in parcel no.1 and parcel no.2 were found to be 98.97 mg/per tablet and 99.10 mg/per tablet respectively.

Learned counsel for the petitioner by referring to order dated 27.06.2019 passed by Sub Divisional Judicial Magistrate, Guruharsahai and FSL report dated 16.10.2019 contends that in the absence of batch number and other particulars of the contraband, the total weight cannot be taken to be the contraband for treating the same to be under commercial category. At the most, parcel samples and the weight found thereunder shall be construed to be the recovered contraband. He refers to the ratio of **Gaunter Edwin Kircher vs State of Goa, Secretariat, Panaji, GoA, 1993 AIR (SC) 1456** and contended that in the absence of batch number, the entire bulk or sufficient quantity by way of sampling is to be sent for chemical analysis.

The aforesaid view was followed by the Division Bench of this Court in **State of Punjab vs Dharam Singh, 2010 (3) RCR (Criminal) 94 (DB)** and **CRM No.23854 of 2016 in CRA-S No.145-SB of 2016** titled 'Baj Singh vs State of Punjab', decided on 20.09.2016.

Per contra, learned State counsel with reference to custody certificate submits that the petitioner is having antecedent behaviour of criminal activity in view of his involvement in three other cases.

Learned counsel for the petitioner submits that the petitioner is on bail in those cases.

Owing to the situation arising out of pandemic COVID-19 and without meaning anything on the merits of the case, the petition is allowed. Petitioner is directed to be released 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.

12.11.2020
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

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