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

CRM-M No.9979 of 2021(O&M)

Date of Decision: 08.03.2021

Mohd. Habib @ Popa

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

Mr. Sarabjit Singh, AAG, 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.156 dated 06.11.2020 registered under Sections 20, 61, 85 of the NDPS Act at Police Station City I Malerkotla, District Sangrur.

As per allegations, the petitioner was pillion rider of the motorcycle, which was driven by Mohd. Asgar @ Bona. On seeing the police party, the driver of the motorcycle tried to turn back. Petitioner along with driver was apprehended by the

police on the basis of suspicion and thereafter, 5 kgs of charas was recovered from a transparent bag held by the petitioner (pillion rider).

As per recovery memo, the same has not been signed by the petitioner.

Learned counsel for the petitioner submits that for want of signature of the petitioner on the recovery memo, no incriminating material can be presumed against the petitioner.

Learned State counsel on instructions from ASI Gurbhajan Singh admits that the recovery memo has not been signed by the petitioner. However, he alleges the complicity of the petitioner on the basis of recovery of huge quantity of contraband.

Learned counsel for the petitioner places reliance upon **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741** to contend that if the signature of the accused is not obtained on the recovery memo, then it amounts to non-compliance of mandatory procedure. He further places reliance upon **CRM-M No.4584 of 2020** titled **Binder Kaur @ Goga Vs. State of Punjab** decided on 06.02.2020 to contend that the persons in trade of contraband would not do the trading in a transparent bag. Petitioner is not involved in any other case and

is having clean antecedents, therefore, rigour of Section 37 of the NDPS Act would not apply.

In view of aforesaid facts, the complicity of the petitioner would remain debatable. Petitioner is in custody since 06.11.2020. Challan has been presented. Charges have been framed, but no PW has been examined so far.

In view of aforesaid facts and circumstances of the case, I deem it appropriate to enlarge the petitioner on regular bail without adverting to the merits of the case.

In view of above, petition is allowed. 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.

08.03.2021*Prince***(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No