

232

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

(Through Video-conferencing)

**CRM-M No.15481 of 2021
Date of Decision: 06.08.2021**

TARSEM SINGH ALIAS SEMA

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

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

Present: Mr. Parvesh Sachdeva, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.02 dated 03.01.2021, registered under Sections 22/61/85 of the NDPS Act at P.S. Arniwala District Fazilka, Punjab.

As per prosecution story, 1500 intoxicant tablets were recovered from the petitioner.

As per short reply filed by way of affidavit of Palwinder Singh, PPS, Deputy Supdt. of Police, Sub-Division Jalalabad, District Fazilka on behalf of respondent No.1, the petitioner

allegedly reposed faith in the Investigating Officer namely SI Jallandhar Singh to proceed further in terms of effecting search of the accused. 1500 tablets having batch number PKZ-20078, Mfg. July, 2020, Exp. June, 2023 were recovered from the petitioner and were taken into police possession.

In the notice under Section 50 of the NDPS Act, the accused replied that whatever article was with him in the polythene envelope thrown by him, the same be recovered and the Investigating Officer himself may conduct search of the accused. The recovery memo prepared by the Police does not show signature of the petitioner. The recovery memo was prepared on 03.01.2021 itself.

Learned counsel for the petitioner by relying upon **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874**, submitted that when the Investigating Officer after noticing the contraband felt the need of invoking Section 50 of the NDPS Act and gave offer to the accused, then it was imperative on the part of the Investigating Officer to comply with the mandatory requirement of Section 50 of the Act. In case of alleged reposing of faith in the Investigating Officer, it was imperative on the part of the Investigating Officer to take the suspect to the nearest Magistrate in order to ensure creditworthiness, transparency and authenticity to the

prosecution case. Learned counsel further relied upon **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 counsel also by making reference to **Sandeep Kumar vs. State of Punjab, 2019(4) R.C.R. (Criminal) 741** submitted that non-obtaining of signature on the recovery memo would be treated to be non-compliance of the mandatory provision. Petitioner is in custody since 03.01.2021. After filing of challan, charges have been framed but no prosecution witness has been examined so far.

Learned State counsel however opposed the bail, but the factual position could not be disputed.

In view of the aforesaid facts and circumstances, the complicity of the petitioner would remain debatable. At this stage without adverting to the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

This petition is allowed. Petitioner is ordered to be released on 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.

August 06, 2021

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No