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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18411-2021 (O&M)
Date of Decision: 05.07.2021

RINKU SINGH @ GABBAR

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Narender Singh Kamboj, Advocate
for the petitioner.

Mr. Sandeep Kumar, D.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.252 dated 30.09.2019, registered under Section 22 of the NDPS Act at Police Station City Faridkot, District Faridkot.

FIR was registered on the basis of secret information. The accused allegedly reposed faith in the Investigating Officer and thereafter the Investigating Officer proceeded to effect recovery without complying with the mandatory requirement

under Section 50 of the NDPS Act. The contraband was recovered from a transparent polythene bag which was kept in the right hand of the accused where strips of tablets were clearly visible. On seeing the police party, the accused tried to throw away the polythene bag in the bushes and one of the strips stuck to the hand of the accused. Total 510 strips of tablets of different types were recovered from the petitioner.

Learned counsel for the petitioner submitted that when the Investigating Officer on 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 take the suspect to the nearest Magistrate and comply with the requirement of Section 50 of the NDPS Act. The compliance of the Act was not done under the alleged faith reposed by the accused in the Investigating Officer himself. Learned counsel for the petitioner placed reliance 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 further submitted that in **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874**, the Hon'ble Apex Court after considering the ratio of above cited precedents held that the Investigating Officer on noticing

the contraband, if gives offer then compliance of Section 50 of the NDPS act becomes mandatory and it becomes imperative on the part of the Investigating Officer to comply with the Section 50 of the NDPS Act mandatorily.

Learned State counsel on instructions from ASI Buta Singh, however opposed the bail on the ground that the recovery is of commercial nature. Petitioner is convicted in three other cases.

In view of aforesaid legal position, it would be debatable as to whether compliance of Section 50 of the NDPS Act was required to be made in the present case in order to impart transparency, creditworthiness and authenticity to the prosecution case. Moreover the alleged recovery is from transparent polythene bag. It would be debatable as to whether a person in the trade of narcotics would trade in a transparent bag.

At this stage, without meaning anything on the merits of the case, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, 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 opinion on merits of the case.

July 05, 2021	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No