

229

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

(Through video conferencing)

**CRM-M No.18529 of 2021(O&M)
Date of Decision: 29.09.2021**

Akbar

.....Petitioner

Vs

State of Punjab

.....Respondent

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

Present:Mr. A.P.S. Sandhu Advocate
for the petitioner.

Mr. C.L. Pawar, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439
Cr.P.C in case bearing FIR No.0116 dated 30.12.2020
registered under Sections 20 and 21 of the NDPS Act at Police
Station City Kurali, District SAS Nagar.

As per allegations, the petitioner was apprehended by
first police party headed by ASI Lakhvir Singh and recovery of

ganja along with white intoxicant powder in a polythene bag was recovered. Thereafter, second police party was informed. Sub Inspector Jasvir Kaur took charge of the investigation and issued notice under Section 50 of the NDPS Act to the petitioner, to which the petitioner replied that he had full faith in the Investigating Officer. Thereafter, Investigating Officer proceeded to recover ganja and white intoxicant powder formally. On weighment, it was found to be 5 kgs of ganja and 60 grams of intoxicant powder, which on analysis was found to be Diphenoxylate Hydrochloride.

Learned counsel for the petitioner submitted that even in case of chance recovery, if the Investigating Officer proceeded to issue notice under Section 50 of the NDPS Act, then the compliance of said provision was mandatory. Learned counsel refers to **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874** . Learned counsel further submitted that recovery of alleged ganja was non-commercial in nature. Intoxicant powder to the tune of 60 grams though was commercial quantity, but the recovery of the same would remain debatable as the same was allegedly found in a transparent polythene. Since the recovery had already been effected by first police party and the method adopted by the second police party was just a farce. Moreover, there was non-compliance of

Section 50 of the NDPS Act. In case of reposition of faith by the petitioner, the petitioner was required to be brought before the nearest Magistrate in order to impart authenticity, transparency and creditworthiness to the prosecution story. Learned counsel refers to **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** in the aforesaid context. Petitioner is in custody since 30.12.2020. Challan has been presented and charges have been framed. The trial of the case may take some time in its culmination.

Learned State counsel, however opposed the bail on the ground the recovery of intoxicant powder is commercial in nature. He further submits that the petitioner is involved in two other cases in which one case is under NDPS Act and one case is under penal code. He is not on bail in those cases.

Looking to the aforesaid facts and circumstances of the case and without adverting to 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 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 opinion on merits of the case.

September 29, 2021	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No