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

(Through Video-conferencing)

**CRM No. 30800 of 2021 in/and
CRM-M No.15638 of 2019
Date of Decision:22.09.2021**

Sham Lal @ Shama

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr.Sahil Puri Advocate for the petitioner.

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

RAJ MOHAN SINGH, J.(Oral)
CRM No. 30800 of 2021

For the reasons mentioned in the application,
additional documents Annexures A-1 and A-2 are taken on
record.

Application stands disposed of.

Main case

Petitioner seeks grant of regular bail under Section 439
Cr.P.C in case bearing FIR No.108 dated 10.09.2018,
registered under Section 15/61 of the NDPS Act at Police
Station Sadar, District Kapurthala.

As per prosecution case, 100 kgs poppy husk was

allegedly recovered. FIR was registered on the basis of secret information. Deputy Superintendent of Police (Investigation), Kapurthala was already called by the police party and his presence was not on account of the option given by the petitioner. Petitioner allegedly reposed faith in that Gazetted officer.

Petitioner has placed on record consent memo as well as recovery memo. Perusal of the consent memo would show that signature of the petitioner is appearing whereas, on the recovery memo his signature is missing.

Learned counsel for the petitioner relies upon **Sandeep Kumar vs. State of Punjab, 2019 (4) RCR (Criminal) 741** to contend that in view of non appearance of the signatures of the petitioner on the recovery memo, there would be non compliance of the mandatory provision and the complicity of the petitioner would remain debatable. He also refers to **Makhan Singh vs. State of Haryana, 2015 (11) SCC 241** to contend that keeping in view the stringent provisions of NDPS Act, compliance of Sections 42 and 50 of the NDPS Act has to be done meticulously in order to ward off any conjecture. Presence of the Gazetted officer with the raiding party prior in point of time and the proceedings conducted in his presence would also remain debatable.

Learned State counsel could not dispute the aforesaid factual position with reference to non appearance of signatures of the petitioner on the recovery memo and also presence of the Gazetted officer with the police party prior in point of time i.e. prior to giving of offer to the accused person.

Prosecution evidence is going on and there is no other case pending against the petitioner. He is in custody since 10.03.2018.

Keeping in view the custody period, stage of trial, other attending circumstances of the case and in view of the situation arising out due to COVID-19 pandemic 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 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.

September 22, 2021*amandeep*

Whether speaking/reasoned

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No