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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.23745 of 2021 (O&M)
Date of Decision: 05.07.2021

DIMPLE MITTAL

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, 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.0094 dated 06.04.2021, registered under Section 22 of the NDPS Act at Police Station Patran, District Patiala.

The FIR has been registered on the basis of secret information to the effect that the Hardeep Singh and the petitioner are habitual in dealing with drugs. A naka was installed. A car was apprehended and 42 bottles of Wings 100

ml Chlorpheniramine Maleate & Codeine phosphate syrup Wincirex cough syrup were recovered from the car. The average weight of the contents of the bottles was found to be 9.8 mg/5 ml.

Learned Senior counsel for the petitioner submitted that despite registration of the case on the basis of secret information, the prosecution has not complied with the mandatory requirements of Sections 42 and 50 of the NDPS Act. As per application for police remand, the Investigating Officer himself conducted the search in the vehicle. A back pack was found from Hardeep Singh sitting on the conductor side seat in the footsteps underneath.

Learned Senior counsel further submitted that the petitioner is not the owner of the car. The car belongs to co-accused Hardeep Singh. Learned Senior counsel further submitted that there was total non-compliance of Section 50 of the NDPS Act. The Investigating Officer on noticing the contraband should have resorted to Section 50 of the NDPS Act. He did not issue any consent memo to the accused, nor was the suspect brought before the Magistrate/Gazetted Officer for effecting search.

In **Gurjant Singh @ Janta Vs. State of Punjab,**

2013(4) RCR (Criminal) 874, the Hon'ble Apex Court after

considering the ratio of **State of Punjab Vs. Balbir Singh, 1994(1) RCR (Criminal) 736**, **State of Punjab Vs. Baldev Singh, 1993(3) RCR (Criminal) 533** and **State of H.P. Vs. Pawan Kumar, 2005(92) RCR (Criminal) 622**, held that when the Investigating Officer on noticing contraband, felt the need of invoking provisions of the NDPS Act, then there has to be mandatory compliance of provisions of the Act and it was imperative on the part of the Investigating Officer to comply with the requirement of Section 50 of the NDPS Act to impart creditworthiness, transparency and authenticity to the prosecution case.

On the other hand, learned State counsel on instructions from ASI Jaswinder Singh opposed the bail on the ground that huge recovery has been effected from the vehicle in which petitioner was one of the occupants. The FIR has been registered on the basis of secret information that the petitioner is dealing in the trade of narcotics. However, there is no other case under the NDPS Act. Challan has not been presented so far. Petitioner is in judicial custody.

Taking into consideration the aforesaid facts and without adverting to the merits of the case at this stage, 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.

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