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

(Through video-conferencing)

**CRM-M No.30563 of 2021
Date of Decision: 09.08.2021**

PAPPU MUKHIA ALIAS PAPPU KUMAR

.....Petitioner

Vs

STATE OF HARYANA

.....Respondent

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

Present: Mr. Bhupinder Ghai, Advocate
for the petitioner.

Mr. Anant Kataria, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C in case bearing FIR No.86 dated 12.11.2020, registered under Section 20(b) of the NDPS Act at Police Station GRP Ambala Cantt. District GRP Ambala Cantt., Haryana.

As per prosecution case, 20 kgs. Ganja was recovered from brother of the petitioner namely Vinod Mukhiya. On 12.11.2020, petitioner was nominated on the basis of disclosure statement of his brother. Petitioner was arrested on 05.04.2021 after five months of lodging of the FIR. 23 kgs. Ganja was

allegedly recovered from the petitioner.

Learned counsel for the petitioner submits that the alleged recovery of Ganja is marginally in excess of the limit prescribed for non-commercial quantity. Upto 20 kgs. Ganja, the quantity is non-commercial. Learned counsel relied upon **Shinda vs. State of Punjab, 2013(3) R.C.R. (Criminal) 557** and **Lakhwinder Singh @ Bittu vs. State of Punjab, 2012(22) R.C.R. (Criminal) 301.**

Learned counsel further submits that the samples were drawn on 06.04.2021 and were sent for chemical analysis only on 25.08.2021 after delay of 52 days. In view of Notification No.1/88 issued by the Narcotics Control Bureau and the view expressed in **Union of India vs. Bal Mukund and others, 2009(2) R.C.R. (Criminal) 574** and **CRA-S No.1449-SB of 2008** titled **'Satpal vs. State of Haryana'** decided on 06.08.2012, the samples were required to be sent to the FSL within 72 hours of its drawl.

Learned counsel also refers to the fact that the challan has been submitted without there being any chemical analysis report. In view of **CRR No.4659 of 2015** titled **'Ajit Singh @ Jeeta and another vs. State of Punjab'** decided on 30.11.2018, filing of challan without FSL report is held to be incomplete challan and the accused is entitled for protection

under Section 167(2) Cr.P.C. Owing to some conflict, the matter has been referred to Division Bench in **CRR No.1125 of 2020** titled **Julfkar vs. State of Haryana**. While making reference, the Court has also granted bail to the accused on furnishing adequate bail bonds and surety bonds to the satisfaction of the concerned Court.

Learned State counsel however opposed the bail on the ground that the alleged recovery of 23 kgs. Ganja falls under commercial quantity. Challan has been submitted and the petitioner is not entitled for bail.

Keeping in view the fact that the samples were sent after about delay of 52 days of its drawl, I deem it appropriate to grant regular bail to the petitioner.

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.

(RAJ MOHAN SINGH)
JUDGE

August 09, 2021

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No