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

CRM-M No. 35981 of 2020 (O&M)
Date of Decision: 05.03.2021

Malkiat Singh

-Petitioner

Vs

State of Punjab

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akashdeep Singh, Advocate,
for the petitioner.

Ms. Samina Dhir, D.A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner seeks grant of regular bail under Section 439 Cr.P.C. in case bearing FIR No.100 dated 22.06.2020 under Section 15 of NDPS Act (Offence under Section 61/85 of NDPS Act added later on) registered at Police Station Urban Estate, Patiala, District Patiala.

As per prosecution case, FIR was lodged with the allegations that when the police party was on patrolling, then during checking, the truck in question was seen coming from the direction of Rajpur and the same was stopped with the help of a torch signal. The driver after stopping the vehicle tried to flee away. He was apprehended by ASI with the help of his companions. On being asked, he disclosed his name as Malkiat

Singh. The police officer gave offer with regard to the option of the accused whether he wanted to be searched before the Magistrate or Gazetted Officer. The accused allegedly reposed faith in police officer. Thereafter, ASI proceeded to effect recovery of 49 kgs of poppy husk from a bag which was placed in a tool box of the truck. The FIR was registered with the recital of recovery of 49 kgs of poppy husk. Thereafter, the petitioner was taken to police station and disclosure statement was recorded and in pursuance of said disclosure statement, 251 kgs of poppy husk was recovered from the same truck which was full of onion.

Learned counsel for the petitioner submits that even if confidence was reposed by the accused in the police officer, still he was required to be taken to the nearest Magistrate in order to impart authenticity, creditworthiness and transparency in the police action.

Learned counsel relies 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 submits that recovery memo is not signed by the accused. He placed reliance upon **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741** to

contend that it amounts to non-compliance of proper procedure.

In view of ratio of **Makhan Singh Vs. State of Haryana, 2015(12) SCC 247**, keeping in view the stringent provisions of NDPS Act, the compliance of Sections 42 and 50 has to be meticulously done by the prosecution.

In **Gurjant Singh @ Janta Vs. State of Punjab, 2013(4) RCR (Criminal) 874**, the Hon'ble Supreme 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 Section 50 of the NDPS Act and gave offer to the accused, then Principle No.1 as held in para No.25 of **Balbir Singh's case (supra)** would not apply. Once notice under Section 50 of the NDPS Act was given to the accused, then it was imperative on the part of the Investigating Officer to comply with the requirement of Section 50 of the NDPS Act mandatorily.

Learned State counsel on the other hand opposed the bail on the ground that recovery is of huge quantity of poppy husk. Petitioner himself is driver-cum-owner of the vehicle in question and the prosecution case shall not vitiate on account of any technical error.

Having heard learned counsel for the parties, I find that recovery of 251 kgs of poppy husk was effected when disclosure statement of the accused was recorded in the police station. In first recovery, only 49 kgs of poppy husk was recovered at the spot. The police officer initially gave offer to the petitioner in respect of his option to be searched before Magistrate or Gazetted Officer and thereafter, proceeded to effect search on reposing faith in him by the petitioner.

Learned counsel further submits that even in case of chance recovery, if offer is given by the police officer, then it becomes mandatory to comply with requirement of Section 50 of NDPS Act.

In view of aforesaid position, I deem it appropriate to enlarge the petitioner on regular bail.

In view of above, the petition is allowed. Petitioner is directed to be released on regular bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of trial Court/concerned Duty Magistrate.

Nothing expressed hereinabove would be construed to be an opinion on the merits of the case.

05.03.2021
Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No