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

CRM-M-35997-2020 (O&M)
Date of decision : 01.03.2021

Ashok Kumar @ Ashoka

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Amar Ashok Pathak, Addl. 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.42 dated 27.02.2020 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Division No.1, District Ludhiana.

As per the allegations, the intoxicating tablets were recovered from the black bag in a three wheeler. The FIR was registered on the basis of secret information. Naka was laid and the petitioner was apprehended with heavy quantity of

intoxicating tablets alongwith three wheeler.

Learned counsel for the petitioner has made the following submissions:-

- 1) As per ruqqa sent by the Inspector-Baljit Singh, the same was received by an officer lower in rank namely ASI Amrik Singh. In view of the above, the case is covered by the ratio laid down in CRA-D-947-DB-2008 titled Sarabjit Singh Vs. State of Punjab, decided on 30.09.2013 and CRM-M-32631-2019, titled Jaswinder Singh Vs. State of Punjab, decided on 13.03.2020.
- 2) The recovery memo finds the number of FIR at the top of the memo. At the time of preparing the recovery memo, even the FIR was not in existence. Even the vernacular of this document shows that word '42' has been typed alongwith other words in continuity.
- 3) Documents viz Non-Consent Memo, Consent Memo are shown to have been signed by the petitioner, whereas in the vernacular copy of recovery memo, no signatures of the petitioner appear on the said document (though wrongly typed in the translated copy of Annexure P-8 attached with CRM-3385-2021).

Learned counsel makes reliance upon the judgment passed by Hon'ble the Supreme Court in **Makhan Singh Vs.**

State of Haryana, 2015(12) SCC 247, to contend that keeping in view the stringent provisions of NDPS Act, the compliance of Sections 42 and 50 has to be meticulously done by the prosecution. He further relies upon the judgment passed by this Court in **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741**, to contend that if the signatures of the accused are not obtained on the recovery memo, then it amounts to non-compliance of the proper procedure. The mentioning of FIR at the top of recovery memo is also hit by the ratio of **Ajay Malik Vs. State of U.T. Chandigarh, 2009(3) RCR (Criminal) 649**.

On the other hand, learned State counsel, on instructions from the Investigating Officer, submits that the recovery is of huge quantity. The prosecution case shall not vitiate on account of any technical error.

After having heard learned counsel for the parties, I find that in view of the submissions made by the learned counsel for the petitioner, complicity of the petitioner would remain debatable on the aforesaid number of pleas which have been referred by the learned counsel for the petitioner with reference to the case laws at this stage.

As per custody certificate, the petitioner is in custody since 29.02.2020. The prosecution evidence is yet to be started.

At this stage, without advertng 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/heavy 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.

01.03.2021

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No