

210-A

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

CRM-M-36307-2020(O&M)

Date of Decision: 25.03.2021

Angrej Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Ms. Rashmi Attri, A.A.G., Punjab.

JAISHREE THAKUR, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of bail pending trial to the petitioner in case FIR No.57 dated 07.05.2020, under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances Act, registered at Police Station Maqsudan, District Jalandhar.

Learned counsel for the petitioner herein *inter alia* would argue that on the personal search of the petitioner 2 kg opium was allegedly recovered from his waist, which is well below the commercial quantity of 2.5 kgs. It is submitted that there is non-compliance of Section 42 of the NDPS Act. It is argued that as per Section 42(2) of the NDPS Act, there is a requirement for an Officer who takes down any information in writing under Sub-Section(1) regarding any offence

having being committed, which is punishable under the NDPS Act, or records grounds for his belief under the proviso thereto, to send a copy thereof to his immediate official superior within 72 hours. In the instant case the *ruqa* was sent by SI Pankaj Kumar to the Police Station, where the *ruqa* was received by an officer of the same designation, namely, SI Raghubir Singh and, therefore, there is non-compliance of Section 42(2) of the NDPS Act as the *ruqa* was not received by a person who was superior in rank to SI Pankaj Kumar. It is also argued that the recovery memo would reflect that the FIR number had already been filled in prior to the registration of the FIR which was registered at 6:10 pm wherein the *ruqa* was received in the Police Station at 5:15 pm. He would place reliance upon a judgment rendered by the Coordinate Bench of this Court in '**Criminal Appeal No.2135-SB-2006 titled as Ajay Malik and others Vs. State of U.T. (2009) 3 RCR CrI.Case-649**' to buttress his contention. It is further argued that the same judgment has been relied upon by another Coordinate Bench of this Court in '**CRM-M-35997-2020 titled as Ashok Kumar @ Ashoka Vs. State of Punjab**'. It is also argued that there is an inordinate delay in sending the contraband to the Forensic Science Laboratory as in fact the contraband was seized on 07.05.2020 but the sample same has been delivered to FSL on 06.06.2020 and there is no explanation forthcoming as to why there was this delay.

Learned counsel appearing on behalf of the respondent-State on the other hand would submit that the argument as regards non-compliance of Section 42(2) of the NDPS Act is not sustainable. In fact, as per the reply filed, the *ruqa* was sent to the SHO of the Police Station

and it was received by SI Raghbir Singh who was the duty officer on 07.05.2020 as the Officer Incharge because Inspector Rajiv Kumar, SHO, was not present in the Police Station as he was on patrolling duty on 07.05.2021 from 10:20 am to 10:30 pm and SI Raghbir Singh had been left Incharge of the Police Station. A similar observation has been made in '**CRM-M-747-2018 titled as Prabh Singh @ Harry and another Vs. State of Punjab**'. It is also submitted that immediately on receipt of the said information, necessary information was sent to the higher authorities. So far as the argument regarding recovery memo is concerned, it is argued that the FIR number was filled subsequently as would be evident from a bare perusal of the same. The FIR number has been filled with a different ink and with a different hand writing, and therefore reliance on judgment in '*Ajay Malik's* case (supra) would be misplaced. As regards the third argument raised regarding delay in sending the contraband to the FSL, it is submitted that it was sent well within a reasonable time without the seals being tampered.

I have heard counsel for the parties.

Without going into the merits of the contentions raised and only taking into account the fact that the petitioner was apprehended with 2 kgs of opium, which would not fall within the category of “commercial quantity” and considering that no other case is pending against him, I deem it appropriate to confirm the interim bail, already granted to the petitioner. The petition is allowed. The interim bail granted to the petitioner is made absolute subject to his furnishing fresh bail bonds in

the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of trial Court/Duty Magistrate concerned.

Any other misc. application would stand disposed of.

25.03.2021
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No