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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.47343 of 2019(O&M)
Date of Decision: 18.03.2021

Dharminder Singh

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Umesh Aggarwal, Advocate
for the petitioner.

Mr. Amar Ashok Pathak, Addl, AG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

The case has been taken up for hearing through video conferencing.

CRM No.2755 of 2021

For the reasons mentioned in the application, the same is allowed. Accompanying documents are taken on record subject to all just exceptions.

Main case

Petitioner seeks grant of regular bail under Section 439

Cr.P.C in case bearing FIR No.263 dated 27.07.2016 registered under Sections 21 and 22 of the NDPS Act at Police Station A Division, Amrtisar.

As per allegations, the petitioner was apprehended when on seeing the police party, he suddenly took turn and tried to throw away one transparent polythene out of his right pocket. On being searched, 150 grams of Buprenorphine intoxicant powder was recovered from the polythene bag. Interim bail was granted to the petitioner, till receipt of FSL report in terms of ratio laid down in **Inderjeet Singh @ Laddi Vs. State of Punjab, 2014(3) RCR (Criminal) 953**. On receipt of FSL report, the petitioner has surrendered and he is in custody since 19.01.2019.

Learned counsel for the petitioner submits that the petitioner is not involved in any other case of NDPS Act. The very recovery of the contraband from a transparent polythene bag cannot be taken to be an instance of the petitioner being involved in trade of narcotics. The factum of contraband present in transparent bag without wrapping of the same in some opaque wrapper would make the case debatable and suspicious in the light of observations made by the High Court in **CRM-M No.4584 of 2020** titled **Binder Kaur @ Goga Vs. State of Punjab** decided on 06.02.2020 and **CRM-M No.8035 of 2019**

titled **Mandir Singh Vs. State of Punjab** decided on 28.02.2020.

Since the petitioner is not involved in any other NDPS case and has no antecedent behaviour of any such criminal activity except the present case, therefore the presence of the contraband in a transparent bag would remain debatable as a person in the trade of contraband would not carry such a contraband in a transparent bag, so as to expose the same in public domain.

Learned counsel further submits that the petitioner was apprehended by an officer having local rank and the officer with local rank is not competent to investigate the offence. In support of his contention, he relies upon notification dated 03.09.1987 issued by the Government of Punjab, **Bikkar Singh Vs. State of Punjab, 2006(3) RCR (Criminal) 16, CRM-M No.5754 of 2020** titled **Chander Shekhar Vs. State of Punjab** decided on 16.09.2020, **CRM-M No.33369 of 2019** titled **Davinderdeep Singh @ Aafta Vs. State of Punjab** decided on 06.08.2020, **CRM-M No.1521 of 2017** titled **Major Singh @ Dodhi Vs. State of Punjab decided** on 23.02.2017 and **CRM-M No.25498 of 2016** titled **Gursahib Singh @ Sabha Vs. State of Punjab** decided on 22.08.2016.

Learned State counsel on the other hand, submits that the aforesaid precedents cannot be appreciated at this stage being a question of fact and the same would be appreciated by the trial Court at the relevant stage.

Even if the aforesaid precedents being based on factual premise and not to be taken for consideration, but I deem it appropriate to consider the custody of the petitioner since 19.01.2019 and the alleged recovery from a transparent bag to be *prima facie* material to grant indulgence, particularly when the petitioner has no antecedent behaviour of criminal activity. Reliance can be placed on **CRM-M No.17481 of 2020** titled **Mani Singh @ Maddi Vs. State of Punjab** decided on 22.07.2020, **CRM-M No.25383 of 2020** titled **Gurbaksh Singh Vs. State of Punjab** decided on 02.09.2020 and **CRM-M No.23706 of 2020** titled **Hardum Vs. State of Haryana** decided on 24.08.2020, wherein custody coupled with clean antecedent were considered for granting regular bail to the accused.

In view of aforesaid position, I deem it appropriate to enlarge the petitioner on regular bail, without advertng to the merits of the case.

In view of above, petition is allowed. Petitioner is

ordered to be released on regular 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.

March 18, 2021	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No