

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

Date of Decision: 06.04.2021

1. CRM-M No.48980 of 2019(O&M)

Mohd. Yaqoob	Petitioner
Vs	
State of Punjab	Respondent

2. CRM-M No.45465 of 2019(O&M)

Ibrahim @ Ibra	Petitioner
Vs	
State of Punjab	Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. P.S. Sekhon, Advocate
for the petitioner in CRM-M No.48980 of 2019.

Ms. Amandeep Kaur Gill, Advocate
for the petitioner in CRM-M No.45465 of 2019

Mr. Dhruv Dayal, Sr. DAG, Punjab.

RAJ MOHAN SINGH, J.(Oral)

The cases have been taken up for hearing through
video conferencing.

Vide this common order, CRM-M No.48980 of 2019
titled Mohd. Yaqoob Vs. State of Punjab and CRM-M No.45465
of 2019 titled Ibrahim @ Ibra Vs. State of Punjab are being
disposed of.

Since both the cases have arisen from same FIR No.76 dated 10.06.2019 registered under Sections 22/61/85 of the NDPS Act at Police Station City-I, Malerkotla, District Sangrur, therefore, common facts are being noticed.

The aforesaid FIR was registered on the basis of secret information that Mohd. Yaqoob and Ibrahim @ Ibra were involved in the business of selling narcotics by bringing the same from other States in heavy quantity. On the date of occurrence also, information was furnished that they were bringing heavy quantity of narcotics and were coming from the side of drain from the bridge of Drain Dhuri. The information was considered to be trustworthy and ruqa was sent by Gurtar Singh SI, Police Station City I, Malerkotla to the police station which was received by another SI namely Chainsukh in the police station. Naka was installed and the accused were apprehended.

According to the prosecution story, the accused were arrested and they were found in conscious possession of 54 strips each containing 10/10 intoxicant tables total 5400 tablets of ALPRASAFE-05, batch No.PCCAA-380, MFG-02/2019 and expiry date 01/2022 and 630 loose capsules of PERVORIN SPAS without any permit or licence. The recovery was considered to be a commercial quantity and the bail was rejected to the accused.

Learned counsel for the petitioners submitted that besides conducting search of the contraband, the personal search of the accused was also conducted, wherein currency notes worth Rs.2000/- were recovered as per seizure memo. The said search was not conducted under Section 51 of the Code of Criminal Procedure, but the same was conducted under NDPS Act. In case, the personal search is conducted, then Section 50 of the NDPS Act becomes mandatory in view of ratio laid down in **State of Rajasthan Vs. Parmanand, 2014(2) RCR (Criminal) 40**. Learned counsel further submitted that when the case is registered on the basis of secret information, then the Investigating Officer has to do the compliance of Sections 42 and 50 of the NDPS Act in a meticulous manner.

In view of judgment passed by this Court in **Sandeep Kumar Vs. State of Punjab, 2019(4) RCR (Criminal) 741**, if the signatures of the accused are not obtained on the recovery memo, then it amounts to non-compliance of the mandatory procedure. The recovery memo itself carries FIR number at the relevant column and in view of ratio laid down in **Ajay Malik Vs. State of UT, 2009(3) RCR (Criminal) 649**, the same would be debatable issue as to the non-compliance of the proper procedure.

The Hon'ble Apex Court in **Makhan Singh Vs. sTate of**

Haryana, 2015(11) SCC 241 has observed that keeping in view the stringent provisions of NDPS Act, compliance of Sections 42 and 50 of the NDPS has to be done by the prosecution. Issuance of ruqa by Gurtar Singh and receipt of ruqa by the officer incharge of the same rank i.e. Chainsukh would give rise to debatable issue as to the mandatory compliance of Sections 42 of the NDPS Act.

Learned State counsel however, opposed the bail on the grounds that the recovery was effected from a bag kept by the accused in their hands and the same was not intrinsically attached with the body, therefore, compliance of Section 50 of the NDPS Act was not mandatory. As regards, personal search of the accused, the same was effected only after effecting recoveries of the narcotics.

Keeping in view the overall, facts and circumstances of the case and in view of status report filed by the State, the complicity of the petitioner on the threshold of mandatory compliance of provisions of NDPS Act would remain debatable. Petitioners are in custody since the date of lodging of FIR. No prosecution witness has been examined so far, after framing of charges. Trial of the case may take some time in its culmination.

In view of aforesaid position, without meaning anything on merits of the case, I deem it appropriate to enlarge the

petitioners on regular bail.

In view of above, both the petitions are allowed.
Petitioners are ordered to be released on regular bail, subject to their 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.

06.04.2021	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No