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

CRM-M-48138-2021

Date of decision:06.04.2022

GURDEEP SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Puneet Kumar Bansal, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

The petitioner has filed the instant petition under Section 439 Cr.P.C., for grant of regular bail in FIR No.72 of 22.07.2021, registered at Police Station Smalsar, District Moga. In FIR (supra), an offence constituted under Section 22 of the NDPS Act, 1985, is embodied.

2. The incriminatory role, as becomes assigned to the bail petitioner in the FIR (supra), is that of his at the crime site becoming witnessed by the police officials concerned. On his sighting the police officials, he allegedly became perplexed, and, attempted to flee therefrom(s) besides, is alleged to throw onto the ground, the polythene bag, which he was at the relevant time holding in his hand(s). He was apprehended at the spot by the police officials, and, from from the black polythene bag, as held by him rather recovery of the psychotropic substances became effected.

3. The gross weight of the psychotropic substance, as recovered, at the crime site, from the purported conscious, and, exclusive possession of the accused, is not contested by the learned counsel for the petitioner, to fall within the domain of commercial quantity thereof. Therefore, apparently the rigors of

Section 37 of the NDPS Act are applicable thereons, and the bail petitioner is *prima-facie* not entitled to his becoming admitted to regular bail.

4. Be that as it may, the learned counsel for the petitioner yet submits, that since in a verdict made by this Court in case titled as '**Balwinder Singh versus State of Punjab**', bearing CRM-M-16150-2021, decided on 19.07.2021, this Court had opined, especially given therein existing rather a factual scenario almost similar to the one existing here, that the afore manner of effectuation of the recovery from the crime site, from the purported conscious, and, exclusive possession of the accused person, would be debatable, and, hence proceeded to rather take the view, that thereupon, at the bail stage it being difficult to assign thereto(s) hence the completest evidentiary value. Therefore, he argues that given, the afore made manner of recovery at the crime site from the purported conscious, and, exclusive possession of the bail petitioner, rather cannot in tandem with the verdict (*supra*), be at the bail stage, becomes assigned any evidentiary value. Consequently, he argues, that the instant bail petition be allowed, and, the bail petitioner be admitted to regular bail.

5. However, for the reasons to be assigned hereinafter, the above made submission, as appertains to the factual scenario, as prevails in the instant case does not constrain, this Court to conclude, that *prima-facie* the bail petitioner was at the relevant crime site, rather not holding in his conscious, and, exclusive possession hence the psychotropic substance, as became recovered at the relevant site. The reasons for making the afore conclusion, arises from, the factum, that the ill conduct of the accused, comprised in his upon sighting the police party becoming perplexed, is obviously conduct inconsistent with his innocence, besides when the police officials concerned, noticed him to, after fleeing from the crime site throw onto the ground, the polythene bag, which he

was holding in his hands. Therefore, when the afore factum cannot, at this stage be concluded to be not imbued with truth, rather when truth or untruth thereof, can be determined only when the trial against the accused opens, and, when rather at the afore stage hence defences in respect of the afore purported tainted manner of inculcation of the accused in the present FIR, can be taken by the accused. Therefore, the afore made argument(s) become rudderless

6. Even otherwise the afore made argument, has a tinge of the bail petitioner imputing to the police officials concerned, an allegation of their foisting the recovery onto the bail petitioner. However, for the afore argument becoming well rested, it was enjoined to be supported by tangible evidence, existing on the records of the investigating officer concerned, and, comprised in the factum, that despite the bail petitioner conducting the jamatalashi of the police officials concerned, his making a writing on the relevant prepared memos, that in sequel thereof, the recovery of the narcotic substance, rather becoming effected, at his instance, from the persons of the police officials concerned. However, the learned State counsel, on instructions given to him, by the investigating officer concerned, submits, that though the bail petitioner carried at the crime site the jamatalashi(s) of the police officials concerned, yet thereafter, on the relevant drawn memos there is no scribed recital therein, by the petitioner, that in sequel thereof, the seized contraband became recovered from the respective persons of the police officials concerned. The lack of the afore writings in the memos relating to the carrying(s) of jamatalashi of the police officials concerned, at the crime site, by the bail petitioner, does bolster, a inference from this Court, that the afore made argument qua foisting onto the person of the accused, the recovered contraband, rather by the police officials, cannot become assigned any creditworthiness.

7. Furthermore, in case the afore ground held some merit, and, irrespective of the afore scribings being not made at the instance of the accused in the memo (supra), or despite the accused asking the police officials to make the afore drawings in the relevant memos appertaining to the jamatalashi(s) conducted by him, of the police officials concerned, at the crime site, theirs not acceding to his request, yet it was open to the bail petitioner, to immediately make a protest in respect thereof, to the officers higher in rank than the investigating officer concerned. However, in respect of the above, there is no evidence existing on record. Therefore, this Court becomes constrained to conclude that, at this stage the bail petitioner is completely estopped to make the afore argument qua the recovered contraband becoming planted onto his person, at the instance of the police officials.

8. There is no merit in the petition, hence is dismissed. This order is only for the disposal of the present petition, and, shall have no bearings on the merits of the case.

(SURESHWAR THAKUR)
JUDGE

06.04.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No