IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-54494-2019
Date of Decision: 10.01.2020

Mohd. Shehbaz

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sunny K. Singla, Advocate,
for the petitioner.

Mr. B.S. Sewak, Addl. A.G., Punjab.

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AMOL RATTAN SINGH, J. (ORAL)

Learned counsel for the petitioner submits that the petitioner having been admitted to interim bail earlier by this Court, vide an order passed on July 24, 2019 in CRM-M-30432-2019, he has now been in custody since November 05, 2019, upon the FSL report having been received, showing therein that the quantity of contraband stated to have been recovered from (as per the police), found to be of commercial quantity.

He further submits that a perusal of the FIR (copy Annexure P-1) shows that the petitioner was arrested on secret information received, with nothing further stated therein and the details of the arrest of the petitioner having been given in the report submitted under Section 173 of the Cr.P.C. (copy Annexure P-2), from which he points out that not even an offer was made to the petitioner that he can be produced before a Magistrate or a Gazetted officer, and therefore, the recovery stated to have been made from him, of 2450 intoxicant tablets, cannot be

accepted to have been actually so made.

Learned counsel for the petitioner further relies upon a judgment of a co-ordinate Bench of this Court in **Rajvir Singh @ Raju** vs. **State of Punjab** 2018 (4) RCR (Criminal) 375, to submit that even though the contraband is stated to have been recovered from a bag hanging on the motorcycle bars of the motorcycle driven by the petitioner, yet, with admittedly a personal search also having been conducted, an offer was bound to be made to him, in terms of Section 50 of the NDPS Act, 1985.

He also refers to a judgment of the Supreme Court in **Arif Khan @ Agha Khan** vs. **State of Uttarkhand** 2018 (2) RCR (Criminal) 931, on that issue.

Mr. Sewak, learned counsel for the State, on the other hand submits that, firstly, the petitioner after having been admitted to interim bail by this Court in the aforesaid petition, had jumped bail and had surrendered only three days later and therefore he does not deserve the concession of bail in terms of Section 439 of the Cr.P.C., and further, the quantity of contraband shown to be recovered from him being well above commercial quantity of 250 grams, in any case he is not entitled to the said concession.

As regards the jumping of bail, learned counsel for the petitioner counters by submitting that the petitioner himself had surrendered within three days of his not having appeared before the trial Court on the date that he was summoned to do so, and consequently, that should not be held against him, with no other criminal case shown to be registered against him.

Having considered the matter, in view of the fact that the petitioner is not shown to have been even offered to be brought before a Magistrate or a Gazetted officer, though of course the allegation in the FIR is that he resisted arrest at the first instance, yet in my opinion, since he was, admittedly, thereafter,

overpowered (even if the version in the FIR is to be accepted at face value at this stage), he was bound to have been at least given that offer as has been held by this Court (co-ordinate Bench), in **Rajvir Singh @ Rajus'** case (supra).

Consequently, with there also admitted to be no other criminal case registered against him, and the FIR having been registered on secret information received, keeping all the circumstances above in mind, without making any comment on the actual merits of the case for or against the petitioner, the petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of the learned trial Court.

January 10, 2020 **(AMOL RATTAN SINGH)**
anil/nitin **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable No.