

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

CRM-M-40017 of 2016

Date of Decision:15.03.2017

Malkit Singh alias Pappu

.....PETITIONER

Vs.

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Sahil Puri, Advocate for the petitioner.

Mr.Sidakmeet Singh Sandhu, AAG, Punjab.

AMOL RATTAN SINGH J. (ORAL)

This petition has been filed under Section 439 Cr.P.C. seeking 'regular bail' to the petitioner in case FIR No.80 dated 26.08.2014, registered for the alleged commission of offences punishable under Sections 15, 25, 29 and 61 of the NDPS Act, 1985, at Police Station, Bholath, Distt. Kapurthala.

The issue earlier argued was whether Section 42 or Section 43 of the NDPS Act, 1985 (for brevity 'the Act'), would apply in this case. Learned State counsel had cited a Division Bench judgment of this Court, to the effect that it would be Section 43 and not Section 42 of the Act.

Learned counsel for the petitioner having cited judgments of the Supreme Court, which he contended were to the contrary.

However, the fact remains that the petitioner has been admittedly in custody since August, 2014, i.e. for more than 2½ years now, with only 02 out of 11 witnesses examined so far before the learned trial Court.

Further, it is contended that there was no sampling of the contraband stated to have been allowed from the petitioner, before a Magistrate

and, therefore, there would be a violation of the directions given by the Supreme Court in the judgment passed in **Union of India Vs. Mohanlal and another, 2016(1) R.C.R. (Criminal) 858.**

Consequently, in the opinion of this Court, the petitioner would be entitled to be released on bail. Accordingly, this petition is allowed. The petitioner shall be admitted to bail upon his furnishing adequate bail bonds and surety bonds to the satisfaction of learned trial Court further subject to any condition that would be laid down by that Court.

However, nothing stated here in above, will be taken to be a finding of this Court on the merits of the case against the petitioner or with regard to his defence thereto, which would be considered by the trial Court wholly on the basis of the evidence led before it.

**(AMOL RATTAN SINGH)
JUDGE**

15.03.2017

Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No