

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

CRM-M No.10539 of 2018 (O&M)

Decided on: 11.10.2018

Kuldeep Singh @ Khadi

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. I.P.S. Kohli, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.26 dated 05.04.2016, for offence punishable under Section 22 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'), registered at Police Station Begowal, District Kapurthala.

Counsel for the petitioner has submitted that the petitioner was granted interim bail awaiting the report of the Forensic Science Laboratory and thereafter, he was re-arrested when the FSL report was received.

Counsel for the petitioner has placed on record the photocopy of the orders passed by the trial Court/Duty Officer in place of Judge, Special Court, Kapurthala to submit that for the last about 06 months, there is no Presiding Officer as the earlier Presiding Officer has

relinquished the charge; the Court was withdrawn and no substitute has been provided till date, therefore, the trial is not progressing.

Counsel for the petitioner has further argued that as per the allegations in the FIR, the Investigating Officer, who conducted the investigation has himself conducted the search of the petitioner as no Gazetted Officer or Magistrate was called at the spot and, therefore, it will be a debatable issue whether the judgment rendered by the Hon'ble Supreme Court ***“Mohan Lal vs State of Punjab”*** passed in **Criminal Appeal No.1880 of 2011**, decided on 16.08.2018, will be applicable in this case or not as the informant and the Investigating Officer are the same person.

Counsel for the State has filed an affidavit of the Station House Office, Police Station Begowal, District Kapurthala along with the Custody Certificate, to submit that the petitioner is involved in one more case under the NDPS Act, in which he was convicted.

Counsel for the petitioner, in reply, has submitted that the petitioner has already undergone the sentence in the said case as it was a case of small quantity.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody for the last about 01 year, 03 months and 20 days and presently, there is no Presiding Officer of the designated Court and no effective proceedings are being carried out by the Investigating Officer and also in view of the fact that conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail bonds and 02 sureties in the like amount, to the

satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

11.10.2018

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No