

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

CRM-M No. 18798 of 2018

Date of decision : 04.12.2018

Dilbagh Singh alias Bagh

.....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. M. S. Saini, Advocate for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

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DAYA CHAUDHARY, J. (Oral)

In pursuance of order dated 12.11.2018, affidavit of the Senior Superintendent of Police, Hoshiarpur has been filed in the Court today and the same is taken on record.

Petitioner Dilbagh Singh alias Bagh has approached this Court by way of filing the present petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to him in case FIR No.74 dated 21.07.2017 under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short - "NDPS Act"), registered at Police Station – Mehtiana, Distt. Hoshiarpur, during pendency of the trial.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas there is no evidence to show that actually he was involved. Learned counsel also submits that no independent witness was joined at the time of the alleged recovery, which is

55 grams of intoxicant powder and there was non-compliance of Section 50 of the NDPS Act. Learned counsel also submits that the Investigating Officer had handed over the seal to the officer who himself was part of the raiding team. All the prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence. The petitioner is in custody since 21.07.2017 and nothing is to be recovered. Only one more case of NDPS Act is there against him, wherein recovery is non-commercial and he is on bail.

Learned State counsel has not disputed the custody period undergone by the petitioner as well as the fact of petitioner being on bail in the other case under NDPS Act.

Heard arguments of learned counsel for the parties. I have also perused the contents of the FIR and other documents available on the file.

Without commenting anything on the merits of the case and keeping in view the period of custody undergone by the petitioner and also the facts that all the prosecution witnesses are official witnesses and there is no possibility that the petitioner may influence them or tamper with the evidence; it has also been admitted in the affidavit by the S.S.P. concerned that the Investigating Officer as well as the complainant is one and the same person, whereas in view of judgment of Hon'ble the Apex Court in case ***Mohan Lal Vs. State of Punjab Criminal Appeal No.1880 of 2011 decided on 16.08.2018***, the Investigating Officer of the case cannot be the same official who is complainant and in that case, the accused was acquitted on this ground, no purpose would be served by keeping the petitioner in

custody.

Accordingly, this petition is allowed and the petitioner is directed to be released on regular bail on furnishing bail/surety bonds to the satisfaction of the trial Court.

04.12.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No