

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

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CRM-M-22471-2018 (O&M)

Date of Decision : 04.09.2018

Mukhtiar Singh

...Petitioner

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B.BAJANTHRI

Present: Mr. P.S.Sekhon, Advocate for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

P.B. BAJANTHRI, J.(ORAL)

In the present petition, petitioner seeks regular bail under the provision of Section 439 Cr.P.C. in FIR No.108 dated 05.09.2017 under Section 21 NDPS Act, registered at Police Station Lohian, District Jalandhar on the score that matter is covered by decision of the Apex Court passed in the case titled as ***Mohan Lal v. The State of Punjab (Criminal Appeal No.1880 of 2011 decision on 16.8.2018)*** while contending that Investigating Officer and complainant are one and the same person.

2. Per contra, learned State counsel while resisting the contention of learned counsel for the petitioner submitted that no doubt Sub-Inspector Surinder Kumar taken up the matter relating to recovery with petitioner-Mukhtiar Singh and co-accused Karnail Singh. Both the accused were given notice regarding their search by the Gazetted officer or Magistrate as suggested by the Sub-Inspector Surinder Kumar. Pursuant to their consent Sub-Inspector Surinder Kumar arranged for search of petitioner and co-accused through the gazetted officer namely Deputy Superintendent of Police, Dilbagh Singh. Thus, recovery of heroin of 800 grams from the

petitioner and 700 grams from the co-accused by the Deputy Superintendent of Police Dilbagh Singh and necessary procedural aspect as contained in the NDPS Act has been complied. Therefore, Investigating Officer and complainant cannot be one in the present case having regard to the factual aspect narrated in the FIR.

3. Heard the learned counsel for the parties.

4. Perusal of the FIR and the contentions relating to recovery of heroin from the petitioner and the co-accused it is evident that complaint or knowledge of suspicion is by Sub-Inspector-Surinder Kumar. When petitioner -accused and co-accused were confronted by Surinder Kumar, petitioner and co-accused were subjected to search through gazetted officer namely Dilbagh Singh, Deputy Superintendent of Police. In other words, recovery of heroin from the petitioner and the co-accused was at the behest of Deputy Superintendent of Police, Dilbagh Singh. In the present case, Sub-Inspector Surinder Kumar has not played the role of both the complainant as well as Investigating Officer so as to contend that the principle applied in the case of *Mohan Lal v. The State of Punjab* (Criminal Appeal No.1880 of 2011 decision on 16.8.2018) is attracted. Accordingly, petitioner has not made out a case so as to grant benefit of regular bail. Hence, petition stands dismissed.

04.09.2018

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasoned?

Yes/ No

Whether reportable?

Yes / No