

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

CRM-M-43860 of 2018 (O&M)

Date of Decision:-.14.11.2018

Salamodeen

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. D.S.Pheruman, Advocate for the petitioner.

Mr. A.S.Sandhu, Additional Advocate General, Punjab.

GURVINDER SINGH GILL, J.

This is second petition filed on behalf of the petitioner seeking grant of regular bail in a case registered vide FIR No.0144 dated 4.11.2017 under Sections 20, 21 and 22 of NDPS Act registered at Police Station Division No.2, District Pathankot.

It is the case of prosecution that a secret information was received by Inspector (STF) Bharat Bhushan to the effect that seven persons namely Manjur Ahmad Lon, Mohammad Rafiq Chak, Mohammad Ajan Khan, Sabro Deen, Salamodeen (referred to as Salamu Din in FIR), Saf Ali and Farook Ahmad were coming in a Jeep to supply '*heroin*' and '*charas*'. Upon receipt of said information barricading was raised and a Jeep was apprehended and 6 out of the above named 7 persons were apprehended, while one managed to escape. The present applicant Salamu Din was found to be in possession of 310 grams of '*heroin*'. The remaining apprehended persons were also found in possession of some other quantities

of contraband.

The learned counsel for the petitioner has submitted that after declining of his bail on 13.8.2018, there has been a change of circumstances inasmuch as a judgment has been delivered by Hon'ble the Supreme Court on 16.8.2018 reported as 2018 (4) RCR (Criminal) 101 - Mohan Lal Vs. State of Punjab wherein it has been held that investigation of the case by the recovery officer himself is against the principles of fair trial. The learned counsel has further submitted that in any case, the matter pertaining to the validity of notification dated 18.11.2009 is still pending in Hon'ble Supreme Court and that in these circumstances, the petitioner cannot be kept behind bars for an indefinite period.

On the other hand, the learned State counsel has submitted that in view of the nature of quantity of contraband recovered which falls within the category of "commercial quantity" and the fetters imposed by Section 37 of NDPS Act, no case for grant of bail is made out.

I have considered the rival submissions addressed before this Court. The first bail application was dismissed by this Court by passing a detailed order on 13.8.2018. There has been no substantial change in circumstance during the intervening period. The fact that Hon'ble Supreme Court had delivered a judgment which could help the accused cannot be said to be a changed circumstance especially since the State counsel is opposing the said contention by citing a judgment of Constitution Bench of Hon'ble the rendered in State of Punjab Vs. Baldev Singh 1993(3) RCR

(Criminal) 533 wherein it has been held as follows:

“ The provisions of Sections 100 and 165 Criminal Procedure Code are not inconsistent with the provisions of the Narcotic Drugs And Psychotropic Substances Act and are applicable for effecting search, seizure or arrest under the Narcotic Drugs and Psychotropic Substances Act also. However, when an empowered officer carrying on the investigation including search, seizure or arrest under the provisions of the Code of Criminal Procedure comes across a person being in possession of the narcotic drugs or the psychotropic substance, then he must follow from that stage onwards the provisions of the Narcotic Drugs And Psychotropic Substances Act and continue the investigation as provided thereunder. If the investigating officer is not an empowered officer then it is expected of him that he must inform the empowered officer under the Narcotic Drugs And Psychotropic Substances Act, who should thereafter proceed from the stage in accordance with the provisions of the Narcotic Drugs And Psychotropic Substances Act. In Balbir Singh’s case after referring to a number of judgments, the Bench opined that failure to comply with the provisions of Criminal Procedure Code in respect of search and seizure and particularly those of Sections 100, 102, 103 and 165 *per-se* does not vitiate the prosecution case. If there is such a violation, what the courts have to see is whether any prejudice was caused to the accused. While appreciating the evidence and other relevant factors, the courts should bear in mind that there was such a violation and evaluate the evidence on record keeping that in view.”

In view of the aforesaid discussion especially that there has been no substantial change of circumstance after dismissal of earlier bail application on 13.8.2018, I do not find any fresh ground so as to entitle the petitioner

for grant of bail. There is no merit in this petition and the same is hereby dismissed.

14.11.2018
kamal

(GURVINDER SINGH GILL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No