

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

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**CRM-M-43905-2018 (O&M)  
Date of Decision : 29.10.2018**

Gursewak Singh

...Petitioner

Versus

State of Punjab

...Respondent

**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 instant petition, petitioner has sought for regular bail under the provision of Section 439 Cr.P.C. in case FIR No.125 dated 28.07.2018, under Section 22/25 of NDPS Act, 1985 registered at Police Station Sardulgarh, District Mansa, Punjab.

2. Learned counsel for the petitioner submitted that in the present case police officer acted as both informer, recovery as well as investigating officer. On this issue, counsel for the petitioner relied on the latest decision of the Supreme Court rendered in ***Mohan Lal v. The State of Punjab*** (Criminal Appeal No.1880 of 2011 decision on 16.8.2018) held that police officer cannot both recovery as well as investigating officer. This issue is squarely covered by the latest decision of the Supreme Court rendered in the case of ***Mohan Lal v. The State of Punjab*** (Criminal Appeal No.1880 of 2011 decision on 16.8.2018). Para 25 reads as under:

*“25. In view of the conflicting opinions expressed by different two Judge Benches of this Court, the importance of a fair investigation from the point of view of an accused as a guaranteed constitutional right under Article 21 of the Constitution of India, it is considered*

*necessary that the law in this regard be laid down with certainty. To leave the matter for being determined on the individual facts of a case, may not only lead to a possible abuse of powers, but more importantly will leave the police, the accused, the lawyer and the courts in a state of uncertainty and confusion which has to be avoided. It is therefore held that a fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigation must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof.”*

3. On instructions of HC Maya Ram, learned State counsel has not disputed the fact that complainant, recovery and Investigation Officer is one and the same person.
4. Heard the learned counsel for the parties.
5. In view of the above facts and circumstances that in the present case police officer acted as both informer, recovery as well as investigating officer. Therefore, without expressing any opinion on the merits of the case, the instant petition is allowed. Petitioner-Gursewak Singh is ordered to be released on regular bail on his furnishing bonds to the satisfaction of trial Court/Duty Magistrate/Chief Judicial Magistrate concerned.
6. Petitioner shall not in any way indulge in any criminal activities and he shall also not influence the witnesses or other wise interfere with the fair trial.

**29.10.2018**

pooja saini

**(P.B.BAJANTHRI)**  
**JUDGE**

*Whether speaking/reasoned?*  
*Whether reportable?*

*Yes/ No*  
*Yes / No*