

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-45768-2018 (O&M)
Date of Decision:-25.10.2018.

Vinay Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Mr. Jasbir Singh Dadwal, 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 provisions of Section 439 Cr.P.C. in case FIR No.52 dated 16.05.2018, under Section 22 of the NDPS Act, registered at Police Station Sadar Nawanshahr, District SBS Nagar.

2.) Custody certificate filed by the learned State counsel today in Court is taken on record.

3.) Petitioner is stated to have been arrested on 16.05.2018 and he had the benefit of interim bail on 18.06.2018. Thereafter, petitioner surrendered on 12.07.2018. Thus, he is in custody since 12.07.2018.

4.) Learned counsel for the petitioner submitted that in the present case, police officer acted as informer, Recovery as well as Investigating

Officer. On this issue, petitioner's counsel 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), wherein it is held that police officer cannot act both recovery as well as Investigating Officer. This issue is squarely covered by the latest decision of the Supreme Court rendered in the **Mohan Lal's** case cited supra. 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.”

5.) On the other hand, learned State counsel while resisting the petitioner's contention, on instructions from ASI Prem Lal, submitted that petitioner is facing yet another FIR No.113 dated 01.07.2015 under Sections 376/506/34 IPC and Section 67 of the I.T. Act, registered at Police Station Garhshankar, District Hoshiarpur. Therefore, petitioner has not made out a case for regular bail. However, learned State counsel has not

disputed the fact relating to informer, Investigating Officer and Recovery Officer are one and the same.

6.) Heard the learned counsel for the parties.

7.) In view of these facts and circumstances, petitioner is entitled to the benefit of regular bail in view of the principle laid down in the Mohan Lal's case cited supra. Therefore, without expressing any opinion on the merits of the case, present petition is allowed. Petitioner-Vinay Kumar is ordered to be released on bail on his furnishing bail/surety bonds to the entire satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned with the following condition:-

(i) Petitioner shall not in any way indulge in any criminal activities and he shall not influence the witnesses or otherwise interfere with the fair trial.

(P.B. BAJANTHRI)
JUDGE

October 25, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.