

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

CRM-M-47647-2018

Date of Decision: 02.11.2018

Nazir Ahmad

... Petitioner

Vs.

State of Punjab

... Respondent

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

Present : Mr. K.S. Sandhu, Advocate
for the petitioner.
Mr. Luvinder Sofat, A.A.G. 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.115 dated 15.10.2017 registered under Section 15 of NDPS Act, 1985 at Police Station Sadar Rupnagar, District Rupnagar.

2. One of the contention raised by the learned counsel for the petitioner is that both complainant, recovery and investigating officer are one and the same person. Present case 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 the other hand, learned State counsel has not disputed the fact that informer, recovery and investigating officer is one and the same person.

4. In view of the above facts and circumstances so also the fact that trial of the case would take some more time to conclude, without commenting any opinion on the merit of case, petitioner-Nazir Ahmad is ordered to be released on bail on his furnishing requisite bail/surety bonds to the entire satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.

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

6. Petition is allowed accordingly.

02.11.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**