

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SMRITI
22/11/2018 17:14:52
I attest to the accuracy and
integrity of this document

CRM-M-49458-2018

Date of Decision: 16.11.2018

Sagar

...Petitioner

vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Robert Kanwar, Advocate
for the petitioner.

Mr. M.S.Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN,J

Prayer in this petition is for grant of regular bail to the petitioner in case FIR No. 216 dated 15.07.2018 under Section 21 of the NDPS Act registered at Police Station City Rajpura, District Patiala.

Counsel for the petitioner submits that the petitioner alongwith Varinder Singh @ Golu was going in a car and the petitioner was driving the same. He further submits that as per the allegations in the FIR, the investigating Officer i.e. SI Hardev Singh gave option that both the occupants have right to be searched either before the Police Officer or a Magistrate and after obtaining the consent of the petitioner and other co-accused, he himself conducted the search and, thereafter, himself conducted the investigation and sent the information to the police. He further submits that it will be a debatable issue whether the judgment of Hon'ble Supreme Court in Mohan Lal vs. State of Punjab, 2018 AIR (SC) 3853 will have a direct bearing on the present case as no second Investigating Officer was called.

Counsel further submits that the petitioner is in judicial custody since 15.07.2018.

Counsel further submits that in the notice, the option was given as a Gazetted Police Officer which is not in compliance of Section 50 of the NDPS Act wherein it is provided “Gazetted Officer” and not “Gazetted Police Officer” and rely upon the judgment of Hon'ble Supreme Court rendered in *State of Rajasthan vs. Parmanand and another, 2014 (2) R.C.R (Criminal) 40*.

Learned State counsel, on instructions from Investigating Officer, has not disputed the factual position.

Without commenting anything on the merits of the case, considering the fact that the petitioner is in judicial custodial since 15.07.2018 and in view of the submissions made by learned counsel for the petitioner, the present petition is allowed. The petitioner is directed to be released on bail, subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate concerned.

16.11.2018
smriti

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No