

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

**CRM-M-54395-2018
Date of decision: 14.12.2018**

Varinder Singh @ Gola

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. G. S. Benipal, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 216 dated 15.07.2018, registered under Section 21 of the Narcotic Drugs & Psychotropic Substances Act at Police Station City, Rajpura, District Patiala.

Learned counsel for the petitioner relies upon order dated 16.11.2018, passed in CRM-M-49458-2018, granting regular bail to co-accused Sagar. The operative part of the order reads as under:

“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 coaccused, 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 custody 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."

Learned counsel for the petitioner further submits that petitioner is not involved in any other case and he is in custody for the last 04 months and 27 days.

Learned State counsel filed custody certificate which is taken on record. He has not disputed the factual position as submitted by learned counsel for the petitioner. As per custody certificate, the petitioner is not

involved in any other case.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custodial since 16.07.2018 and also in view of the submissions made by learned counsel for the petitioner; the instant petition is allowed. The petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate concerned.

December 14, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No