

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18026-2019 (O&M)
Date of decision: 13.05.2019

Gurdev Singh Sandhu @ Babba

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashit Malik, Advocate for the petitioner.

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

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.250 dated 18.10.2018 under Section 22 of NDPS Act, registered at Police Station Civil Lines, Bathinda, District Bathinda.

Learned counsel for the petitioner submits that as per allegations in the FIR, the Investigating Officer/SI Gurdarshan Singh had stopped a car, which was driven by petitioner Gurdev Singh Sandhu @ Babba and co-accused Jasandeep Singh @ Sunny Bandi was sitting on the adjacent seat. It is further stated that thereafter, the Investigating Officer gave a joint offer to both the accused, which is not in accordance with the law laid down by the Hon'ble Supreme Court in **State of Rajasthan Vs. Parmanand and another, 2014 (2) RCR (CrI.) 40**. It is also submitted that though a Gazetted Officer was called at the spot, however, no second Investigating Officer was called and the entire investigation was conducted by the same officer and therefore, in view of judgment of the Hon'ble Supreme Court in **Mohan Lal Vs. State of Punjab, 2018 (4) RCR (CrI.) 101**, it will be a debatable issue during the trial whether

the proper procedure was allowed or not.

Learned counsel for the petitioner has further referred to the judgment dated 11.02.2019 passed in **Criminal Appeal Nos.2450-2451 of 2010 (Varinder Kumar Vs. State of Himachal Pradesh)**, wherein the Hon'ble Supreme Court has clarified that all the pending criminal prosecutions, trials and appeals prior to the law laid down in **Mohan Lal's** case (supra) shall continue to be governed by the individual facts of the case. It is thus argued that the present FIR has been registered after rendering the judgment by the Hon'ble Supreme Court in **Mohan Lal's** case (supra) and therefore, it will be covered by the same, in view of clarifications given in **Varinder Kumar's** case (supra). Learned counsel further submits that the petitioner is in custody since 21.10.2018; he is first offender and is not involved in any other case.

Learned State counsel, on the basis of custody certificate, could not dispute the factual position, however, submitted that non-consent memos were prepared separately and a Gazetted Officer was called at the spot before conducting the search.

Without commenting anything further on merits of the case, considering the arguments raised by learned counsel for the parties, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[**ARVIND SINGH SANGWAN**]
JUDGE

13.05.2019
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No