

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

**CRM-M No.39861 of 2018
Decided on: 14.01.2019**

Baljinder Kumar @ Jinder @ Chatra

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Zorawar Singh Chauhan, 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 to the petitioner under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.46 dated 11.04.2018, for offence punishable under Section 22 of the Narcotic Drug and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') registered at Police Station Goraya, District Jalandhar Rural.

Counsel for the petitioner has submitted that as per the allegations in the FIR, on 11.04.2018, ASI Jagdish Rai, on suspicion apprehended the petitioner and then, served a notice under Section 50 of the NDPS Act for giving an option to be searched before a Magistrate of a Gazetted Officer and when the petitioner repose confidence in the said Investigating Officer, he (ASI Jagdish Rai) himself conducted the search and after the alleged recovery was made, he further carried out the investigation.

Counsel for the petitioner has, thus, submitted that at no point of time, the second Investigating Officer was called and the entire investigation including the recovery was conducted by the same Investigating Officer, therefore, it will be a debatable issue whether the judgment rendered by the Hon'ble Supreme Court **“Mohan Lal vs State of Punjab”** passed in Criminal Appeal No.1880 of 2011, decided on 16.08.2018, will be applicable in this case or not as the Investigating Officer was the same person, who conducted the entire investigation.

Counsel for the State, on instructions from HC Lovinder Singh, has not disputed the factual position but opposed the prayer for bail.

Without commenting anything on merits of the case, considering the fact that the petitioner is in custody since 11.04.2018; and also in view of the fact that conclusion of the trial is likely to take some time, this petition is allowed and the petitioner is directed to be released on bail subject to his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate/Illaqa Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail of the petitioner, in case he is found involved in any other case or misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

14.01.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No