

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

Sr. No.210

CRM-M-53010-2018

DECIDED ON: December 17, 2019

ANKUSH ANAND

..PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Satyaveer Singh, Advocate and
Mr. Abhilaksh Grover, Advocate,
for the petitioner.

Mr. P.S. Walia, AAG, Punjab.

SUDHIR MITTAL, J. (ORAL)

The petitioner seeks grant of regular bail in case FIR No. 179 dated 05.07.2018 registered at Police Station Derabassi, District SAS Nagar Mohali under Section 22 of the NDPS Act, 1985.

2. Learned State counsel submits that out of a total of 12 PWs, 05 have already been examined and 04 have been given up. Out of the remaining 03 PWs also, 02 of them have been examined in chief and thus, the trial is likely to be concluded at an early date.

3. Learned counsel for the petitioner submits that the petitioner has been in custody since 05.07.2018 and the trial is not likely to be concluded at an early date as three more witnesses remain to be examined. There is no other criminal case pending/decided against the petitioner and the recovery allegedly effected from him is non-commercial in nature. This

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is borne out from the calculations made on page 4 of the bail petition. Moreover, co-accused namely Sunny has been granted regular bail by this Court vide order dated 20.12.2018 passed in CRM-M-53099-2018. The I.O. of this case is also the complainant and thus, the petitioner is entitled to the benefit of ***Mohan Lal vs. State of Punjab, 2018(4) R.C.R. (Criminal) 101***. He also places reliance upon ***Rajvir Singh @ Raju vs. State of Punjab, 2018(4) R.C.R. (Criminal) 375***, ***E. Micheal Raj vs. Intelligence Officer, Narcotic Control Bureau, 2008(2) R.C.R. (Criminal) 597*** in support of his contention that the entire weight of the tablet is not to be taken into consideration.

4. Learned State counsel opposes the prayer for bail *inter alia* on the ground that the trial is nearing completion. He also submits that whether the weight of the complete tablet is to be taken into consideration to determine the nature of the recovery is under examination of a Larger Bench of the Supreme Court. He distinguishes the judgment of ***Mohan Lal (supra)*** on the ground that in the present case, the FIR is dated 05.07.2018 and the said judgment is only prospective in nature. Regarding co-accused Sunny, it is submitted that the no recovery was effected from him, thus, his case is not similar to the case of the petitioner.

5. From the submissions of learned counsel for the parties, it is apparent that a large quantity of contraband i.e. 10680 tablets in strips were recovered from the petitioner. The breakdown is as follows:-

1.	Lomotil	5400
2.	Alprasafe 0.5	2400
3.	Spasmo-Proxyvon Plus	2880

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6. The issue regarding whether the complete weight of the tablet/capsule is to be taken into consideration to determine the nature of the recovery is under consideration of the Larger Bench of the Supreme Court and thus, it cannot be conclusively said that non-commercial quantity was recovered from the petitioner. In any case, in my opinion, this is not a relevant consideration for grant of bail as the matter will be gone into at the time of trial. As far as the judgment in *Mohan Lal's case (supra)* is concerned, in view of the judgment in *Varinder Kumar vs. State of Himachal Pradesh, 2019(1) R.C.R. (Criminal) 1003*, the case of the petitioner is not covered by the ratio of *Mohan Lal's case (Supra)* as the FIR in this case is dated 05.07.2018 i.e. before the decision of *Mohan Lal's case (Supra)*. On the principle of parity also, the petitioner has no case as no recovery was effected from the co-accused namely Sunny. The trial is nearing completion as is evident from the fact that the three witnesses remain to be examined out of which 02 have been examined in chief and the next date of hearing is 21.12.2019.

7. The petition is accordingly dismissed.

December 17, 2019

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No