

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

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**CRM-M No. 17499 of 2020 (O&M)
Date of Decision: 4.08.2020**

JAGTAR SINGH

Petitioner

Vs

STATE OF PUNJAB

Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.K.V.S.Ahluwalia, Advocate,
for the petitioner.

Mr. Rana Harjasdeep, D.A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

This case has been taken up for hearing through video-conferencing.

This petition has been filed under Section 439 Cr.P.C seeking regular bail in case bearing FIR No.38 dated 19.11.2018 under Section 21 of the NDPS Act registered at Police Station Patara , District Jalandhar.

Firstly CRM-M No. 34379 of 2019 was filed by the petitioner. The said petition was tagged with bunch of cases,

which was kept for consideration in view of pending reference before the Hon'ble Apex Court. The aforesaid petition was disposed of on 4.12.2019 by observing that the petitioner shall be entitled to move fresh petition after the reference by the larger bench is decided.

Learned counsel for the petitioner states that in fact the ratio of **Mohan Lal vs. State of Punjab, AIR 2018 (SCW) 2853** came to be considered by the Hon'ble Apex Court in **Varinder Kumar vs. State of Himachal Pradesh (Crl.Appeal No.2450-51 of 2010 decided on 11.2.2019)** and it was held that all the pending criminal prosecutions, trials and appeals prior to the law laid in **Mohan Lal' case (supra)** shall continue to be governed by the individual facts of the case. **Mohan Lal's case (supra)** was decided by the Hon'ble Apex Court on 16.8.2018. The FIR in the present case was lodged on 19.11.2018. Thereafter, the petitioner also approached this Court vide CRM-M No.1404 of 2020, which was dismissed as withdrawn vide order dated 4.3.2020.

Learned counsel for the petitioner submits that now the reference in **Hira Singh and another vs. Union of India and another (2017) 8 SCC 162** has been answered by the Hon'ble Apex Court vide judgment dated 22.4.2020 and it has been held that the entire bulk of contraband has to be seen while computing nature of recovery in the context of commercial

and non-commercial category.

Learned counsel for the petitioner also submits that the aforesaid ground is not available to the petitioner in view of reference by the Hon'ble Apex Court, but so far as the ratio of **Mohan Lal's case (supra)** is concerned the same is prospective in nature i.e the cases, which have been registered after the date 16.8.2018. Learned counsel further submits that in view of requirement of Section 50 of the NDPS Act, the accused has to be apprised of the existence of his right to be searched before the Gazetted officer or Magistrate. The said event has to be performed by the police even before giving the offer to the accused under Section 50 of the NDPS Act. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. It would be of little significance if the accused is not able to exercise the same for want of knowledge about its existence. Even if the case is not registered on secret information, but once the offer is given to the accused in terms of Section 50 of the NDPS Act, then the same has to be complied with by the prosecution in order to impart authenticity, transparency and creditworthiness to the prosecution story.

At the time of withdrawal of second petition on 4.3.2020, the reference by the Hon'ble Apex Court in **Hira Singh's case (supra)** did not come, therefore, petitioner seeks

indulgence of this Court by way of present petition on the basis of prospectivity of judgment in **Mohal Lal's case (supra)**.

In the present case, recovery is of 500 gms of heroin on personal search from the right pocket of the petitioner. On chemical analysis, 38.79% of diacetylmorphine (heroin) has been detected in the content of the parcel. After framing of charges, two of the prosecution witnesses have been examined out of 14 witnesses. Due to situation arising out of pandemic Covid-19, the trial has become standstill. Petitioner is not involved in any other case.

Per contra, learned State counsel states that the ratio of **Mohan Lal's case (supra)** would apply only at the stage of final decision. However, it is not in dispute that the FIR in the present case was registered on 19.11.2018 and the judgment in **Mohan Lal' case (supra)** came to be pronounced by the Hon'ble Apex Court on 16.8.2018.

In view of aforesaid position, case would be debatable as to the complicity of the petitioner and the same is dependent upon the nature of evidence to be led by the parties.

At this stage, without meaning anything on the merits of the case, it would be just and appropriate to grant regular bail to the petitioner.

In view of above, this petition is allowed. Petitioner is ordered to be released on regular bail, subject to his furnishing

adequate bail bonds/surety bonds to the satisfaction of the trial Court.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

August 04, 2020
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RAJ MOHAN SINGH)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No