

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-34386-2021

Date of decision : 14.10.2021

Jagseer

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms.Veena Hooda, Advocate
for the petitioner.

Mr.Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

This is a first petition filed under Section 439 of the Cr.P.C. for grant of regular bail to the petitioner in FIR no.66 dated 15.03.2021 registered under Sections 15, 61, 85 of the NDPS Act, at Police Station Ukalana, District Hisar, Haryana.

Learned counsel for the petitioner has submitted that in the present case, as per the prosecution version, the present petitioner was apprehended with *Doda Post* (poppy husk) weighing 2.30 kgs on 15.03.2021. She has further submitted that in the present case, the said recovery is only marginally higher more than the small quantity, which is upto 1 kg. and is much lesser than the commercial quantity, which is than beyond 50 kgs. It has also been submitted that the petitioner is in custody since 15.03.2021 and challan has already been filed on 07.06.2021. There

charges have not been framed in the present case. It has been submitted that trial is likely to take some time, more so in view of the pandemic situation. It has also been submitted that all the prosecution witnesses are official witnesses, therefore, question of influencing them would not arise. It has further been argued that even with respect to the alleged recovery, the same has been effected jointly from the petitioner and one Jaspreet.

Learned State counsel has opposed the petition and has submitted that the present petitioner has two other cases pending against him and in one case, the petitioner has been convicted.

In rebuttal, learned counsel for the petitioner has submitted that as far as the conviction is concerned, the same was for a period of 4 months and the petitioner has already undergone the same and in the other two cases also, the petitioner has been released on bail. It is further argued that in all the said cases, quantity involved was non-commercial. Reliance has been placed upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, 2012 (2) SCC 382 to contend that the facts and circumstances of the present case are to be seen and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. The relevant portion of the said judgment is reproduced hereinbelow:-

“As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from

the jurisdiction of the Court etc.”

Keeping in view the abovesaid facts and circumstances, more so the fact that the recovery in the present case is 2.30 kgs of poppy husk which is marginally higher than the small quantity and much lower than the commercial quantity, and more so, the petitioner has been in custody since 15.03.2021 and the challan has already been presented in the present case, and there are 16 witnesses none of which have been examined and trial is likely to take time, more so in view of the pandemic situation and more so all the witnesses in the present case are official witnesses and thus, the question of influencing the said witnesses does not arise and even the recovery in the present case is effected jointly from the petitioner and one Jaspreet, the present petition is allowed and the petitioner is ordered to be released on bail on his furnishing bail / surety bonds to the satisfaction of the concerned trial Court/ Duty Magistrate and subject to the fact that he is not required in any other case.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

(VIKAS BAHL)
JUDGE

October 14, 2021

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No