

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

(203)

CRM-M-48729-2021 (O&M).
Date of Decision:-26.11.2021.

Bhajan Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Swarn Tiwana, Advocate for the petitioner.

Mr. Sarabjit Singh, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is the second bail application under Section 439 of Cr.P.C., seeking regular bail to the petitioner in FIR No.149 dated 09.06.2021 under Section 18 of the NDPS Act, 1985, registered at Police Station Anaj Mandi, District Patiala.

Learned counsel for the petitioner has submitted that in fact the present bail application is the first bail application, inasmuch as the first one was withdrawn on 10.11.2021 since complete particulars had not been mentioned and liberty was granted for filing a fresh petition with better particulars and, thereafter, the present petition has been filed.

Learned counsel for the petitioner has submitted that in the present case, even in case the prosecution version is taken to be true, then also the alleged recovery of 1 kg and 450 gms of opium would fall within

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non-commercial quantity and the present petitioner is in custody since 09.06.2021 and challan has already been presented in the present case and there are as many as 11 witnesses, who are all official witnesses out of which, only one witness has been examined and, thus, the trial is likely to take time, moreso, in view of the present pandemic. It is also submitted that the petitioner is HIV positive and for the said purpose, he has referred to the medical report Annexure P-4. It is further submitted that since all the witnesses are official witnesses, thus, the question of influencing the said witnesses would not arise.

Learned State counsel, on the other hand, has opposed the present bail application and has submitted that the petitioner is/was involved in 11 other cases.

Learned counsel for the petitioner, to rebut the said aspect, has submitted that out of the said 11 cases, there was only one case under the NDPS Act in which the petitioner has already been acquitted. It is further submitted that out of the said 11 cases, in 05 cases, the petitioner has been acquitted, in one case cancellation report has been submitted and in one case the petitioner has been released on probation. It is submitted that although the petitioner has been convicted in two cases but the same pertain to the years 2005 and 2009 and the sentence awarded in the said cases was 02 years and 03 years, respectively, which has already been completed. It is further submitted that the other two remaining cases are of the year 2003 and 2002 in which the petitioner is already on bail. In support of his arguments, learned counsel for the petitioner has relied upon the judgment passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and others 2012***

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(2) SCC 382. Reference has been made to the relevant portion of paragraph 6, which 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 above-said facts and circumstances, moreso, the fact that in the present case, alleged recovery from the petitioner is of non-commercial quantity and the petitioner has been in custody since 09.06.2021 and the challan in the present case has already been presented and out of 11 witnesses only one witness has been examined and, thus, the trial is likely to take time moreso, in view of the present pandemic and all the witnesses who are to be examined are official witnesses and, thus, the question of influencing the said witnesses does not arise and the petitioner is HIV positive as per the medical report (Annexure P-4) and also keeping in view the law laid down by the Hon’ble Supreme Court in Maulana’s case (supra), the present petition for grant of regular bail deserves to be allowed.

Accordingly, 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 him not being required in any other case.

However, nothing stated above shall be construed as a final

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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

November 26, 2021.
sandeep
Whether speaking/reasoned:-
Whether Reportable:-

Yes/No
Yes/No