

CRM-M-7492-2022

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

(206)

CRM-M-7492-2022.
Date of Decision:-25.02.2022.

Pawan Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurpal Singh Sandhu, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.323 dated 28.12.2021 registered under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "NDPS Act") at Police Station City Sri Muktsar Sahib, District Sri Muktsar Sahib, during the pendency of the trial.

Learned counsel for the petitioner has submitted that in the present case the alleged recovery of heroin is of 35 grams each from the petitioner and his co-accused and the said quantity is non-commercial quantity inasmuch as, commercial quantity of heroin is stipulated at 250 grams. It has further been submitted that in the present case, the recovery has not been effected from the petitioner as the same is stated to have been made from a transparent envelope which was stated to have allegedly been thrown by the petitioner. It has been argued that no person would carry intoxicant substance in a transparent envelope.

Learned counsel for the petitioner has also submitted that the petitioner has been

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in custody since 28.12.2021 and the challan has not been presented in the present case. Thus, the presentation of challan and conclusion of trial would take substantial time moreso, in view of the present pandemic. Learned counsel for the petitioner has further submitted that the co-accused of the petitioner Deepak Kumar alias Deepu, who is similarly placed as the present petitioner, has already been granted the concession of regular bail vide order dated 21.02.2022 passed in **CRM-M-6483-2022.**

Learned State counsel has opposed the present petition for regular bail and has submitted that the petitioner is involved in one other case. Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has already been granted concession of bail in the said case and in the said case, the quantity involved is of non-commercial quantity. Learned counsel for the petitioner has also relied upon the judgment of Hon'ble Supreme Court in ***“Maulana Mohd. Amir Rashadi vs. State of U.P. and another”***, reported as ***2012 (2) SCC 382*** to contend that the facts and circumstances of the present case are to be seen while deciding a bail application and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in other cases. 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.”

This Court has heard the learned counsel for the parties and has perused the paper book.

Keeping in view the above said facts and circumstances moreso, the fact that the alleged recovery effected is of non-commercial quantity and there are some arguable points in the main case as have been raised by the learned counsel

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for the petitioner which would be considered during the course of trial and the petitioner has been in custody since 28.12.2021 and the presentation of challan and progress of the trial would take time moreso, in view of the present pandemic and also the fact that the co-accused of the petitioner i.e., Deepak Kumar alias Deepu, who is similarly placed as the present petitioner, has already been granted the concession of regular bail vide order dated 21.02.2022 passed in **CRM-M-6483-2022** and also in view of the law laid down in ***Maulana's*** case (supra), the present petition for regular bail 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.

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 petition.

(VIKAS BAHL)
JUDGE

February 25, 2022.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes/No

Yes/No