

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CRM-M-7768-2022
Decided on : 28.02.2022

Gaurav @ Gora

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL
(Through Video Conferencing)

PRESENT: Mr. Ashwani Gaur, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (Oral)

The present petition has been filed under Section 439 of Cr.P.C. for grant of bail to the petitioner in case FIR No. 514 dated 14.12.2021 under Sections 17 and 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Sonapat, District Sonapat.

Learned counsel for the petitioner has submitted that in the present case, the alleged recovery made from the petitioner is of non commercial quantity. It is further submitted that the recovery of 206 gms. of charas has been made whereas the commercial quantity starts from 1 Kg. It is also submitted that as per the prosecution case, 27 gms of smack has been recovered whereas the commercial quantity is 250 gms. It is further submitted that the petitioner has been in custody since 15.12.2021 and the challan in the present case has already been presented and there

are as many as 17 witnesses out of whom none have been examined and thus, the trial is likely to take time, moreso, in view of the present COVID-19 pandemic situation. It is also submitted that all the said 17 witnesses are official witnesses and thus, the question of influencing or threatening them would not arise.

Learned State counsel has opposed the present application for regular bail and has submitted that the present petitioner is involved in four other cases.

Learned counsel for the petitioner, in rebuttal, has submitted that out of the said four cases, in three cases, the petitioner has been acquitted and one case which is pending, is of the year 2016 which also involved non commercial quantity of smack i.e. 2.07 gms. and in the said case, the petitioner has already been granted the concession of regular bail. He has further submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 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 (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 abovesaid facts and circumstances, moreso, the fact that the recovery made from the petitioner is of non commercial quantity and the petitioner has been in custody since 15.12.2021 and challan in the present case has already been presented and there are 17 witnesses out of whom none have been examined and all the said witnesses are official witnesses and thus, the question of the petitioner threatening or influencing them does not arise and also in view of the law laid down in Maulana's (*supra*) case, the present petition for regular bail is allowed and the petitioner is ordered to be released on bail on his furnishing bail bonds/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 expression of opinion on the merits of the case and the trial Court 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

February 28th, 2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No