

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-11208-2022
Date of decision : 22.03.2022

Balraj alias Bittu

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Prince Sharma, Advocate
for the petitioner.

Mr.Munish Sharma, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.404 dated 13.09.2021 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short “NDPS Act”) at Police Station Beri, District Jhajjar, Haryana, during the pendency of the trial.

Learned counsel for the petitioner has submitted that the petitioner had filed earlier bail petition which was withdrawn on 18.02.2022 with liberty to file fresh one by giving better particulars. It has been submitted that now the present petition has been filed after giving better particulars and thus the present petition is in fact the first regular bail petition. It has further been submitted that the alleged recovery from the petitioner was 505 grams of charas which is lower than the commercial

petitioner has been in custody since 13.09.2021 and challan in the present case has already been presented and there are 12 prosecution witnesses and none of them have been examined. It has been argued that the petitioner is suffering from AIDs and he was found HIV positive as per his Green Booklet bearing registration no.14632 and he needs special treatment which can be provided to him only in special wards of the government hospital.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in several other cases.

Learned counsel for the petitioner has submitted that in most of the cases, the petitioner has been acquitted and in some cases, he has been convicted but there is no case pending against the petitioner. Learned counsel for the petitioner has 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 learned counsel for the parties and has

It is not in dispute that alleged recovery from the petitioner is of non-commercial quantity and the petitioner has been in custody since 13.09.2021 and the challan in the present case has already been presented and the investigation is complete and there are 12 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time moreso, in view of the present pandemic. The petitioner is stated to be suffering from AIDs as he was found HIV positive as per Green Booklet bearing registration no.14632 and thus requires due health care.

Keeping in view the above said facts and circumstances and in view of law laid down in *Maulana's* case (supra), 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.

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

March 22, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No