

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-11121-2022
Date of decision : 22.03.2022

Sombir @ Som

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Sharad Choudhary, 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.228 dated 29.07.2021 registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sahlawas, Tehsil Matanhail, District Jhajjar, Haryana.

Learned counsel for the petitioner has submitted that in the present case, even as per the prosecution case, the alleged recovery from the petitioner is of 139 grams of charas which is slightly higher than the small quantity, i.e. 100 grams and is much lower than the commercial quantity which starts from 1 kg. It has been submitted that the petitioner has been in custody since 30.07.2021 and there are 12 prosecution witnesses and none of them have been examined as yet. It has also been submitted that the petitioner had withdrawn his first bail petition on 10.11.2021 at that stage

and even subsequent to the same, more than 4 months have elapsed and yet the trial has not progressed and none of the witnesses have been examined.

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

Learned counsel for the petitioner, in rebuttal, has submitted that out of the said five cases, the petitioner has already been acquitted in three cases. It has been submitted that as far as FIR no.273 is concerned, he has been acquitted on 11.03.2022. It has been stated that even FIR no.28 the petitioner is not an accused and the person whose name is identical as that of the petitioner and his father's name is also identical as that of the petitioner, is an accused. It has also been submitted that in FIR no.199, the petitioner was convicted on 24.10.2005 and has already undergone the sentence of 2 years. It has further been submitted that no other case is pending against the petitioner other than the present case.

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

It is not in dispute that the alleged recovery from the petitioner is 139 grams of charas which is just above the stipulated small quantity, i.e.100 grams and much lower than the commercial quantity, i.e., 1 kg. The petitioner has been in custody since 30.07.2021 and there are 12 prosecution witnesses and none of them have been examined thus, the trial is likely to take time moreso, in view of the present pandemic. The petitioner had earlier filed a regular bail petition, which was withdrawn on 10.11.2021 at that stage and even after a period of more than 4 ½ months, still no progress has been made in the trial as none of the witnesses have been examined and

thus the trial is likely to take time moreso in view of the present pandemic. The period of further incarceration of the petitioner for more than 4 ½ months after 10.11.2021 is a subsequent change of circumstance entitling the petitioner to institute the second regular bail petition and also entitling him to grant of regular bail in the facts and circumstances of the present case.

Keeping in view the abovesaid facts and circumstances, 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