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

CRM-M-23040-2022

Date of decision : 12.09.2022

Mukesh @ Babu Chapri @ Mukesh Thakur

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ram Bilas Gupta, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of regular bail to the petitioner in FIR No.154 dated 10.03.2021 registered under Sections 21-61-85 of the NDPS Act, at Police Station Mujessar, District Faridabad.

Learned counsel for the petitioner has submitted that the petitioner is in custody since 10.03.2021 and the investigation has been completed and challan has been presented and there are 12 prosecution witnesses, out of which, only one witness has been examined and thus, the conclusion of trial is likely to take time. It is further submitted that the recovery allegedly effected from the present petitioner is of 42 grams of smack and the same would fall within the ambit of non-commercial quantity inasmuch as the commercial quantity of the same starts from 250 grams. It is

further argued that it has been wrongly mentioned in the order rejecting bail of the petitioner that the said quantity would fall within the definition of commercial quantity.

On the other hand, learned State Counsel has opposed the present petition for grant of regular bail to the petitioner and has submitted that the petitioner is involved in four other cases and thus, does not deserve the concession of regular bail. It is, however, not disputed that the quantity of contraband involved in the present case is of non-commercial quantity.

Learned counsel for the petitioner, in rebuttal to the abovesaid argument, has submitted that none of the said cases are under the NDPS Act and 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 and the bail application of the petitioner cannot be rejected solely on the ground that the petitioner is involved in another case. 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.

In the present case, the petitioner is in custody since 10.03.2021 and investigation is complete and challan has been presented and out of 12

prosecution witnesses, only one witness has been examined and thus, the conclusion of trial is likely to take time. The recovery effected from the present petitioner is stated to be of 42 grams of smack, which would fall within the ambit of non-commercial quantity, inasmuch as the stipulated commercial quantity of the same starts from 250 grams.

Keeping in view the abovesaid facts and circumstances and also in view of law laid down in ***Maulana Mohd. Amir Rashadi's*** case (Supra), the present petition is allowed and the petitioner is ordered to be released on regular bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Duty Magistrate, subject to him not being required in any other case.

However, it is made clear that in case, any act is done by the petitioner to threaten the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

12.09.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**