

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-26540-2022

Date of decision : 29.06.2022

Narinder Kumar alias Dara

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHLPresent: Mr. Ravi Malhotra, Advocate
for the petitioner.

Mr.Sarabjit Singh Cheema, AAG, Punjab.

VIKAS BAHL, J.(ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of bail to the petitioner in FIR no.47 dated 12.04.2022 registered under Section 21(B) of the Narcotic Drugs and Psychotropic Substances, Act, 1985 at Police Station Goraya, District Jalandhar.

Learned counsel for the petitioner has submitted that in the present case the petitioner has been falsely implicated and even as per the prosecution case, the petitioner and his wife were merely standing and were apprehended on account of suspicion and from the present petitioner, recovery of 4 grams heroin has been effected and from the wife of the petitioner, recovery of 6 grams of heroin has been effected. It is further submitted that the recovery effected from the present petitioner constitutes small quantity as the same is lesser than 5 grams. It is also submitted that the petitioner has been in custody since 12.04.2022 and challan has already been presented and there are 11 prosecution witnesses and none of them have been examined and thus, the trial is likely to take time. It is stated that

been effected, has already been granted regular bail by the trial Court vide order dated 17.05.2022.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the recovery effected from both the petitioner and his wife are to be taken jointly and thus, the total recovery effected would be 10 grams of heroin, which would not fall within the category of small quantity. It is further submitted that the petitioner is involved in other cases and thus, is a habitual offender and does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, 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 perused the paper book.

The petitioner has been in custody since 12.04.2022 and the investigation is complete and the challan has already been presented and

thus, the trial is likely to take time. All the witnesses are police officials and thus, the question of petitioner influencing them does not arise. As per the case of prosecution, recovery of 4 grams of heroin has been effected from the petitioner and 6 grams of heroin has been effected from the wife of the petitioner. The wife of the petitioner has already been granted regular bail by the trial Court vide order dated 17.05.2022. The question whether the recovery is to be treated as individual recovery in the present case of 4 grams and 6 grams of heroin or joint recovery of 10 grams of heroin, is matter of debate which would be finally adjudicated during the course of trial. In any case, even if the recovery is taken to be joint recovery of 10 grams of heroin then also, the same is far lesser than the commercial quantity stipulated, which starts from 250 grams.

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

June 29, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No