

CRM-M-36123 of 2022

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

CRM-M-36123 of 2022
Date of decision: 09.11.2022

Kulwant Singh

.....Petitioner

vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Ashok K. Sharma Bhana, Advocate,
for the petitioner.

Mr. N.K. Poswal, AAG, Haryana.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 439 Cr.P.C. seeking regular bail in case bearing FIR No.443 dated 28.05.2022 under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act') registered at Police Station Assandh, District Karnal.

The case of the prosecution is that on 27.05.2022, on the basis of secret information, petitioner/accused Kulwant Singh was arrested by the police, having in his unauthorized possession 20 grams smack, after complying with the mandatory provisions of the NDPS Act. Consequently, the FIR was registered.

Learned counsel for the petitioner contends that the co-accused of the petitioner, namely, Vikram had been granted interim anticipatory

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bail by a Co-ordinate Bench of this Court vide order dated 21.07.2022 passed in CRM-M-26570 of 2022, which has been confirmed by this Court vide order of an even date. He further submits that the petitioner is in custody for the last 05 months and 11 days. Challan has already been presented and no recovery from the petitioner is to be made at this stage. He further submits that contraband allegedly recovered from the petitioner i.e. 20 grams smack falls in the category of 'intermediate quantity' and, therefore, the rigors of Section 37 of the NDPS Act are not applicable.

Learned State counsel submits that the petitioner is involved in four other cases and refers to para 6 of the status report. The details of the FIRs is as under: -

- (i) FIR No.416 dated 21.09.2016 under under Section 61-1-14 of the Excise Act Police Station Assandh, Karnal, in which accused was acquitted by the learned trial Court vide order dated 06.08.2015.
- (ii) FIR No.225 dated 06.04.2011 under Section 61-1-14 of the Excise Act, Police Station Assandh, in which petitioner was acquitted by the learned trial Court vide order dated 06.08.2015.
- (iii) FIR No.178 dated 04.04.2014 under Section 21 of the NDPS Act, Police Station Assandh, in which accused/petitioner was convicted vide order dated 25.10.2017 by the learned trial Court.
- (iv) FIR No.229 dated 10.04.2011 under Section 15 of the NDPS Act, Police Station Assandh, Karnal, in which accused was acquitted by the learned trial Court vide order dated 11.06.2015.

Learned counsel for the petitioner submits that the petitioner has

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been acquitted in three cases and has been convicted in one case vide order dated 25.10.2017 (Annexure P-4) and has been sentenced to undergo for the period of one month which he has already undergone and a fine of ₹500/- was imposed. Learned counsel has relied upon the judgment of Hon'ble Supreme Court in ***Maulana Mohd. Amir Rashadi Vs. State of U.P. and another, 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.”

Keeping in view the above, since the co-accused has already been granted interim anticipatory bail vide order dated 21.07.2022, which has been confirmed by this Court vide order of an even date and the fact that challan has already been presented and nothing is to be recovered from the petitioner at this stage, no fruitful purpose would be served in retaining the petitioner in jail anymore.

Thus, without commenting upon the merits of the case, the petitioner is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa

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Magistrate/Trial Court.

The petition stands disposed off accordingly.

09.11.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No