

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

CRM-M-38731-2022

Date of Decision: 02.09.2022

Balwinder Singh @ Pamma

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jagdish Singh Mahal, Advocate,
for the petitioner.

Mr. Ramdeep Partap Singh, Sr. D.A.G., Punjab.

VIKAS BAHL, J. (Oral)

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.0017 dated 11.03.2022 registered under Section 22 (added later Sections 27-A and 29) of the Narcotic Drugs and Psychotropic Substances, Act, 1985 (in short "NDPS Act") at Police Station Verka, District Amritsar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 11.03.2022 and the challan in the present case has already been presented and there are 11 prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. It is further submitted that the petitioner is not involved in any other case and the alleged recovery in the present case is of 202.68 grams of Tramadol Hydrochloride and the same is non-commercial quantity as the commercial quantity stipulated for the same starts from 250 grams. It is also submitted that in the present case, the alleged recovery has been effected from the trunk

of the Aactiva and the petitioner is not the owner of the said Aactiva.

Learned counsel for the petitioner has further submitted that the co-accused of the petitioner Ashu Kashav has been granted bail by this court vide order dated 11.07.2022.

Learned State counsel on the other had opposed the present petition and has submitted that the petitioner has involved in two other cases under the NDPS Act and therefore, does not deserve the concession of regular bail.

Learned counsel for the petitioner in rebuttal has submitted that as per settled law, it is the facts of the present case which are required to be considered for the purpose of deciding the present bail application. For the said proposition, learned counsel for the petitioner has relied upon judgment dated 16.01.2012 passed by the Hon'ble Supreme Court in Criminal Appeal No.159 of 2012 titled as **Maulana Mohd. Amir Rashadi Vs. State of U.P. and others** report as 2012 (2) SCC 382 and reference has been made to the relevant portion of paragraph 6 which 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 11.03.2022 and the challan in the present case has already been presented and there are 11

prosecution witnesses and none of them have been examined, thus, the trial is likely to take time. The recovery effected in the present case is of non-commercial quantity and has been effected from the trunk of an Aactiva which is not the ownership of the petitioner.

The co-accused of the petitioner, namely, Ashu Kashav has already been granted the concession of bail vide order dated 11.07.2022 in CRM-M-27384-2022.

Keeping in view the above said 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.

September 02, 2022
nitin

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No