

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

**CRM-M-43949-2021
Date of decision: 01.02.2022**

Ram Swaroop alias Pawan

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Amit Choudhary, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

(Through video conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

This petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case FIR No. 0439 dated 16.12.2020, registered under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 at Police Station Ellenabad, District Sirsa, Haryana.

Learned counsel for the petitioner relies upon order dated 26.08.2021 passed in CRM-M-24923-2021, vide which co-accused Amarjeet, from whom the recovery was effected, has been granted the concession of regular bail. The operative part of the order reads as under:

“Learned counsel for the petitioner submits that as per allegations in the FIR, registered at the instance of the Investigating Officer, it is stated that while on patrol duty, he stopped a car and the driver told his name as Amarjeet i.e. the petitioner. On suspicion, he was given a notice that he is carrying some narcotic contraband.

Thereafter, in presence of the Gazetted Officer, search of the car was conducted and three plastic bags carrying 15 kgs each of poppy husk was recovered i.e. total of 45 kgs of poppy husk.

Learned counsel for the petitioner further submits that total quantity recovered from the petitioner would fall under the non-commercial quantity. It is further submitted that the petitioner is not involved in any other case under the NDPS Act and is in judicial custody for the last more than 08 months.

Learned counsel for the petitioner further submits that the Additional Sessions Judge, Sirsa has dismissed his bail of the petitioner only on the premise that he is involved in one FIR No.0124 dated 28.02.2014 under Section 392 of the IPC registered at Police Station Sadar, Fatehabad.

Learned counsel for the petitioner has placed on record the judgment dated 10.03.2017 passed in the aforesaid FIR by Judicial Magistrate 1st Class, Fatehabad vide which, the petitioner was acquitted in the said FIR.

Learned counsel for the petitioner further submits that the petitioner is not facing the prosecution in any other case. It is further submitted that the recovery would fall under the non-commercial quantity and certain moot points are involved which are to be decided during the course of trial.

Learned counsel for the petitioner further submits that the challan stands presented and charges were framed on 10.02.2021, however, till date no prosecution witness has been examined due to COVID-19 situation and it will take a long time in conclusion of the trial.

Learned State counsel has filed the custody certificate in Court and has not disputed the factual position and as per the custody certificate, petitioner is in

judicial custody for about 08 months and 06 days and is involved in one more case under Section 392 of the IPC, however, he is on bail in that case.”

For the sake of brevity, the facts are not reproduced again.

Learned counsel for the petitioner submits that the recovery effected from co-accused Amarjeet was of non-commercial quantity and the petitioner was nominated on the disclosure of said co-accused. It is further submitted that after the arrest of the petitioner, nothing was recovered from him.

Learned counsel further submits that the petitioner is in judicial custody for the last more than 05 months and though the petitioner is involved in one more case, however, he is on bail in the said case.

Learned State counsel has filed the custody certificate and has not disputed the fact that the recovery was effected from aforesaid co-accused Amarjeet, who has already been granted the concession of regular bail by this Court and the petitioner was nominated on the basis of the disclosure of said co-accused, however, nothing was recovered from him. It is submitted that out of total 21 prosecution witnesses, none has been examined so far.

I have heard learned counsel for the parties.

Without commenting upon the merits of the case, considering the fact that the petitioner is in judicial custody for the last more than 05 months; co-accused Amarjeet, from whom the recovery was effected, has already been granted the concession of regular bail as noticed above; conclusion of trial is likely to take some time as no prosecution witness has been examined so far and also in view of the judgment rendered in

Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1 and State By (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr. 2022 Live Law (SC) 69, the instant petition is allowed. 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/Illaqa Magistrate, concerned.

01.02.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>