

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

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**CRM-M-39979-2022 (O&M)
Decided on : 12.10.2022**

Eib Khan

. . . Petitioner(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Gurpal Singh Sandhu, Advocate
for the petitioner(s).

Mr. J.S. Arora, DAG, Punjab
assisted by ASI Rachpal Singh.

SANJAY VASHISTH, J. (Oral)

CRM-32538-2022

This is an application, under Rule 3(A)(i), Chapter 6, Part-B, Volume-V, of the High Court Rules and Orders, seeking leave to appear, act or plead before this Court.

For the reasons mentioned in the application, the same is allowed as prayed for.

CRM-M-39979-2022

The instant petition has been filed under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail to the petitioner – Eib Khan, who has been booked for having committed the offence punishable under Sections 20, 21, 22, 27-B of the NDPS Act, 1985, in FIR No. 150, dated 28.06.2022, registered at Police Station City Sri Muktsar Sahib, Distt. Sri Muktsar Sahib, during the pendency of trial.

At the outset, learned State counsel has filed the custody certificate dated 11.10.2022 in Court today. Same is taken on record, subject

to all just exceptions. Office to tag the same at appropriate place.

A copy thereof has been handed over to the counsel for the petitioner.

Learned counsel for the petitioner submits that recovery in the present case from the petitioner is 2 grams of Heroin, which is even much less to the small quantity i.e. 5 grams under the NDPS Act. He further submits that petitioner is in side jail for the last more than 03 months and after completion of investigation, challan has been presented before the Court concerned. Even otherwise, sentence in such like offences is maximum for a period of one year. He further submits that there are fairly arguable points during the course of the trial showing the innocence of the petitioner. He further submits that further incarceration of the petitioner is not worth in this case.

Besides above, learned counsel for the petitioner submits that other co-accused of the petitioner has also been extended the concession of regular bails by this Court vide order dated 30.08.2022, passed in CRM-M-37696-2022 and CRM-M-37851-2022 as well as vide order dated 20.09.2022, passed in CRM-M-42412-2022. Photocopies of the said orders have been produced in Court, which are taken on record, subject to all just exceptions.

Per contra, learned State counsel has vehemently opposed the bail application of the petitioner by submitting that offence under the NDPS Act, is serious offence, and to control this dangerous trend, petitioner should not be granted the concession of bail.

Besides this, as per the custody certificate, petitioner has undergone more than 03 months out of the maximum awardable sentence of two years (being it a repeated offence under the NDPS Act).

Learned State counsel, on instructions from ASI Rachpal Singh, also informs the Court that recording of evidence is yet to start in the present case and total 26 prosecution witnesses are to be examined by the prosecution.

Although custody certificate produced by the learned State counsel shows that there are more than 10 cases registered against the present petitioner, and out of those 10 cases, 04 cases are under the NDPS Act. Learned counsel for the petitioner submits that except in one case i.e. FIR No. 100, dated 13.06.2014, under Sections 22/61/85 of NDPS Act, registered at P.S. Mukatsar City, in all the other cases, either petitioner is on bail or has not been convicted by any of the Court. In FIR No. 100, dated 13.06.2014, petitioner has been convicted and sentenced to undergo RI for 10 years, however, in that case, petitioner has been enlarged on bail by this Court.

Be that as it may, I have considered the submissions addressed by learned counsel for the parties and perused the relevant material on record with their able assistance. Since the recovery in the present case is only 2 grams of Heroin and the process of recording of statements of all 26 prosecution witnesses, is yet to commence, I deem it appropriate to extend the concession of regular bail to the petitioner in the present case also.

Accordingly, the prayer made in the present petition is **allowed**. Petitioner is ordered to be released on bail in this case, subject to his furnishing bail/surety bonds to the satisfaction of the learned trial Court/ Chief Judicial Magistrate/ Illaqa Magistrate/ Duty Magistrate concerned, if not required in any other case.

It is made clear that the petitioner shall not extend any threat and shall not influence any prosecution witnesses in any manner directly or indirectly.

The observation made hereinabove shall not be construed as an expression of opinion on the facts of the case and the Trial Court is expected to decide the case on the basis of complete evidence available on record.

It is further made clear that if in future petitioner is found indulged in similar kind of activities, prosecution would be at liberty to seek cancellation of bail in the present case.

Petition stands disposed of.

(SANJAY VASHISTH)
JUDGE

October 12, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*