

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(235)

CRM-M-42781-2022

Date of decision: - 21.09.2022

Pushpender

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Ms. Alisha Soni, Advocate, for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.117 dated 23.03.2022, registered under Section 17 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at Police Station City Bahadurgarh, District Jhajjar.

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 23.03.2022 and the investigation is complete and the challan has been presented and there are 20 witnesses, none of them have been examined and thus, the trial is likely to take time. It is stated that the alleged recovery from the petitioner is of 500 grams of opium, which is of non-commercial quantity as the commercial quantity stipulated for the same starts from 2.50 Kgs.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that the petitioner is involved in one

more case, thus, he does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner is on bail in the said case and 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 23.03.2022 and the investigation is complete and the challan has been presented and there are 20 witnesses, none of them have been examined and thus, the trial is likely to take time. The alleged recovery from the petitioner in the present case is of 500 grams of opium, which is a non-commercial quantity and thus, the bar under Section 37 of the NDPS Act would not apply to the facts of the present case.

Keeping in view the above said facts and circumstances as well as the law laid down in *Maulana Mohd. Amir Rashadi'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.

However, it is made clear that in case, any act is done by the petitioner to threaten or influence the complainant or any of the witnesses, then it would be open to the State to move an application for cancellation of bail granted to the petitioner.

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 21, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No