

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-45749-2022

Date of decision : 12.10.2022

Balwinder Singh alias Bindu

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kuldeep Singh Siwach, Advocate
for the petitioner.

Mr.Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a second petition under Section 439 Cr.P.C. read with Section 167(2) Cr.P.C. for grant of regular bail to the petitioner in FIR no.180 dated 06.07.2022 registered under Section 21(b), 27-A of the Narcotic Drugs and Psychotropic Substances, Act, 1985 at Police Station Ding, District Sirsa.

Learned counsel for the petitioner has submitted that the earlier bail application of the petitioner was withdrawn on 22.09.2022. The present petition has been filed after properly translating the FIR and thus, in fact the present bail application is effectually the first bail application of the present petitioner. It is submitted that the alleged recovery in the present case effected from the petitioner and co-accused-Baldev Singh was of 15 grams of heroin which included the weight of the poly-pouch and thus, the same would fall in the category of non-commercial quantity inasmuch as the

commercial quantity stipulated for heroin starts from 250 grams. It is further submitted that the petitioner has been in custody since 06.07.2022 and the investigation is complete and the challan has already been presented but along with the challan, the report of FSL had not been submitted and the FSL report has not been submitted till date and thus, the petitioner is entitled to the concession of default bail on the said ground as the requisite period has already elapsed. It is stated that there are 11 witnesses and out of which, none have been examined and thus, the trial is likely to take time.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner is involved in one more case under the NDPS Act and thus, is a habitual offender.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner has been granted bail in the said case and in the said case, no recovery was effected from the present petitioner and the recovery of 12 grams of heroin was effected from his co-accused. He 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 06.07.2022 and the investigation is complete and the challan has already been presented and there are 11 witnesses and out of which, none have been examined and thus, the trial is likely to take time. The recovery effected from the present petitioner and co-accused amounts to 50 grams of heroin which includes the weight of poly-pouch, as has been recorded in paragraph 2 of the order dated 09.09.2022 rejecting the bail of the petitioner. The said recovery is alleged to have been effected from the petitioner and co-accused Baldev Singh. The said recovery would fall within the category of non-commercial quantity as the commercial quantity stipulated for heroin starts from 250 grams and thus, bar under Section 37 of the NDPS Act would not apply. The FSL report has not been submitted till date.

Keeping in view the above said facts and circumstances and in view of the law laid down in ***Maulana'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.

(VIKAS BAHL)
JUDGE

October 12, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No