

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(222)

CRM-M-48428-2022 (O&M)

Date of decision: - 27.10.2022

Ram Dev Saini

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Aakash Juneja, Advocate,
for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-39974-2022

This is an application filed for grant of leave under Rule 3/A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

CRM-M-48428-2022

This is the first petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR No.323 dated 25.07.2022, registered under Section 18-C of the Narcotic Drugs & Psychotropic

Substances Act, at Police Station Meham, District Rohtak.

Learned counsel for the petitioner at the outset has submitted that inadvertently, order dated 20.09.2022 rejecting the bail application of one Rajiv Kumar passed by the Additional Sessions Judge, Rohtak, who is not an accused in the present case, has been annexed along with the present petition.

Learned counsel for the petitioner has produced on record the correct copy of the order dated 28.09.2022 passed by the Additional Sessions Judge, Rohtak, rejecting the bail of the present petitioner, which has been taken on record and has been marked as "Mark A". ,

Learned counsel for the petitioner has submitted that the petitioner has been in custody since 27.07.2022 and the investigation is complete and the challan has been presented and there are 22 prosecution witnesses, out of whom none have been examined, thus, the trial is likely to take time. It is further submitted that there is no recovery of any narcotic drug from the present petitioner and even the recovery effected from co-accused amounting to 1 Kg. 480 grams of opium, is less than the commercial quantity as the stipulated commercial quantity for opium starts from 2.50 KGs. It is also submitted that the petitioner has been implicated on the basis of the disclosure statement of co-accused, but there is no evidence linking the petitioner with the alleged crime and has referred to the order rejecting the bail application of the present petitioner, as per which, an amount of Rs.8,000/- was recovered from him. It is stated that mere recovery of an amount of Rs.8,000/- cannot be stated to be incriminating evidence against the present petitioner.

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

Learned counsel for the petitioner, in rebuttal, 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 record.

The petitioner has been in custody since 27.07.2022 and the investigation is complete and the challan has been presented and there are 22 prosecution witnesses, out of whom none have been examined, thus, the trial is likely to take time. No recovery of any narcotic drug has been effected from the present petitioner. The recovery of 1 Kg. 480 grams of opium has been effected from co-accused of the petitioner would fall

under the category of non-commercial quantity as the stipulated commercial quantity for opium starts from 2.50 KGs and thus, the bar under Section 37 of the NDPS Act would not apply.

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, 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.

October 27, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No