

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-51222-2022

Date of decision : 15.11.2022

Kanshi Ram

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Ankush Aggarwal, Advocate and
Mr.Gursimran Singh Madaan, Advocate
for the petitioner.

Mr. Ramdeep Partap Singh, Sr.DAG, Punjab.

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.84 dated 14.08.2022 registered under Sections 15, 18, 27(a) of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short "NDPS Act") at Police Station Bahav Wala, District Fazilka.

Learned counsel for the petitioner has submitted that in the present case, the alleged recovery effected from the house of the petitioner is of 10 kgs. of poppy husk, 7 grams of opium and Rs.7,99,500/- which as per the case of the prosecution is stated to be drug money. It is submitted that the alleged recovery would fall within the ambit of non-commercial quantity and the petitioner has been in custody since 14.08.2022 and the investigation is complete and the report under Section 173 Cr.P.C. has already been presented and there are 15 witnesses, out of which, none have

been examined and thus, the trial is likely to take time. It is stated that the bar under Section 37 of the NDPS Act would not apply in the present case.

Learned State counsel, on the other hand, has opposed the present petition for regular bail and has submitted that the petitioner has been convicted in another case under the NDPS Act and thus, does not deserve the concession of regular bail.

Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner was convicted in the said case for 5 months and he has already undergone the said sentence 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 alleged recovery from the house of the petitioner falls within the ambit of non commercial quantity and thus, bar under Section 37 of the NDPS Act would not apply. The petitioner has been in custody since 14.08.2022 and the investigation is complete and the report under Section

which, none have been examined and thus, the trial is likely to take time.

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

November 15, 2022

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No