

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-52305-2022

Date of decision : 17.11.2022

Ajay @ Ajji

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. V.B. Godara, Advocate
for the petitioner.

Mr.Gurbir S. Dhillon, AAG, Haryana.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 439 Cr.P.C. for grant of regular bail to the petitioner in FIR no.462 dated 28.08.2022 registered under Section 21-b of the Narcotic Drugs and Psychotropic Substances Act 1985 (in short “NDPS Act”) at Police Station Coty Fatehabad, District Fatehabad.

Learned counsel for the petitioner has submitted that the alleged recovery effected in the present case is of 15.10 grams of heroin which would not fall under the category of commercial quantity as the commercial quantity stipulated for heroin starts from 250 grams. It is further submitted that the petitioner has been in custody since 28.08.2022 and the investigation is complete and the challan has already been presented and there are 16 witnesses, out of which, none have been examined and thus, the trial is likely to take time. It is further submitted that 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 is involved in several other cases.

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 paper book.

The recovery effected in the present case is of 15.10 grams of heroin which would fall within the ambit of non commercial quantity and thus, the bar under Section 37 of the NDPS Act would not apply and the petitioner has been in custody since 28.08.2022 and the investigation is complete and the challan has already been presented and there are 16 witnesses, out of which, none have been examined and thus, the trial is likely to take time.

Keeping in view the above said facts and circumstances, 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 17, 2022
Davinder Kumar

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