

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-56003-2022
Date of Decision: 13.12.2022

KALA SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Jasleen Kaur, Advocate
for the petitioner.

Ms. Ramta Chaudhary, DAG, Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 439 Cr.P.C. is for the grant of regular bail in case bearing FIR No.0114 dated 05.06.2022 (Annexure P-1) registered under Sections 21(b) of the NDPS Act at Police Station Special Task Force Mohali.

2. The brief facts of the case are that while the police party was on patrolling duty and reached bus stand of village Aulakh, then on the left side of the road two persons with short hair were fiddling with a transparent polythene bag in their hands. On seeing the police party, they threw the transparent polythene bag on the ground in which there was a white coloured intoxicating substance and tried to escape. They were apprehended and disclosed their names as Kala Singh alias Kala (petitioner) son of Veera Singh and Jagga Singh alias Jagga son of Bikkar Singh. The recovery of 27 grams of heroin was effected from the transparent polythene bag thrown by both the accused.

3. The learned counsel for the petitioner contends that nothing was recovered from the conscious possession of the petitioner. Taking the allegations to be correct, the recovery was of non-commercial quantity of contraband and therefore, the rigors of Section 37 of the NDPS Act would not apply to the case of the petitioner. There was a violation of Section 50 of the NDPS Act and mere pendency of other cases would not a ground to reject the bail application of the petitioner in view of the judgments in **Maulana Mohd. Amir Rashadi Versus State of U.P. & Anr., 2012(1) R.C.R. (Criminal) 586, Pawan Verus State of Haryana, CRM-M-17336-2022, decided on 18.07.2022** and **Sukhchain Singh @ Miithu Versus State of Punjab, CRM-M-37792-2022, decided on 27.09.2022.**

4. On the other hand, the learned State counsel contends that the petitioner and his co-accused are habitual offenders. As many as five other FIRs have been registered against the petitioner including three under the NDPS Act. In FIR No.36 dated 17.05.2015 registered under Section 15 of the NDPS Act at Police Station City Malout, the petitioner has been convicted vide judgment dated 05.05.2018 for being found in possession of 04 Kgs of poppy husk. In FIR No.68 dated 07.08.2018 registered under Section 15 of the NDPS Act, at Police Station Sadar, Malout, the petitioner and his co-accused Jagga Singh have been convicted vide judgment dated 07.01.2022 for having been found in possession of 03 Kgs of poppy husk. Even in the third case bearing FIR No.132/2006 registered under Section 15 of the NDPS Act at Police Station Lambi, the petitioner stands convicted. He contends that when the petitioner filed his petition for the grant of regular bail before the Trial Court, he had not disclosed about the fact of the registration of other

cases and his convictions in cases under the NDPS in the affidavit attached with the bail application. Even, the present petition is mentioned as the first petition under Section 439 Cr.P.C. whereas his first petition was ordered to be dismissed as withdrawn on 18.10.2022 passed in CRM-M-43774-2022 and this effectively is the second petition without any change of circumstances. She thus, contends that the antecedents of the petitioner as also his conduct do not entitle him to the grant of bail.

5. I have heard the learned counsel for both the parties at length.

6. The reliance of the petitioner on the judgment of the Hon'ble Supreme Court in **Maulana Mohd. Amir Rashadi** (supra) is fallacious. In the said case, the accused who had been granted bail was a sitting Member of Parliament facing a number of cases. Most of the cases had ended in acquittal. The Court had stated that it was the duty of the Court seized of a bail application to find out the role of the accused in the case. In the present case, admittedly, the petitioner was found in possession of illicit material. Further he is a convict in three cases under the NDPS Act and therefore, he cannot claim the benefit of bail placing reliance on the judgment in **Maulana Mohd. Amir Rashadi** (supra).

In the case of **Pawan Verus State of Haryana** (supra), the petitioner therein was an under-trial in two cases under the NDPS Act. In both those cases, he had been granted the concession of bail. It was in that situation that the petitioner therein had been granted bail. In the present case, however, as has already been pointed above, the petitioner is a convict in three cases under the NDPS Act and an under-trial in two cases for the commission of offences under the Indian Penal Code.

In the case of *Sukhchain Singh @ Miithu Versus State of Punjab* (supra) the petitioner therein was an accused in one case under the NDPS Act and one case under the Indian Penal Code. It was in that situation that the petitioner therein had been granted the concession of bail.

7. Further, merely because the recovery in the present case does not fall in the commercial category does not by itself entitle the petitioner to the grant of bail. The restriction to the grant of bail under Section 37 of the NDPS Act are in addition to those under Section 439 Cr.P.C. and therefore the attending facts and circumstances of a case have also to be examined.

8. Something needs to be said about the conduct of the petitioner. When his bail application was declined by the Trial Court, it was observed that he had filed a false affidavit by not disclosing the other cases pending against him and those in which he has been convicted. His conduct before this Court is somewhat similar. A perusal of the head-note of this petition would reveal that the present petition is shown to be the first petition for the grant of regular bail under Section 439 Cr.P.C. However, from the record it is apparent that this is the second bail application of the petitioner, the first one having been ordered to be dismissed as withdrawn on 18.10.2022. Therefore, the conduct of the petitioner also does not entitle him to the grant of bail.

9. In view of the above, I find no merit in the present petition and therefore the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

13.12.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No