

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

218

CRM-M-5674-2023 (O&M)

Date of decision: 26.04.2023

KALLU RAM ALIAS KALA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. J.S. Moudgill, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 439 Cr.P.C. for the grant of regular bail to the petitioner in respect of FIR No.268 dated 07.10.2022, under Section 22 of NDPS Act, registered at Police Station Patran, District Patiala.

2. Learned counsel contends that the petitioner has been in custody for the last about 7 months. The non-commercial quantity of contraband has been recovered from him. There is another case registered against him under the NDPS Act, involving a recovery of non-commercial quantity of contraband, wherein he is on bail vide order dated 28.09.2018. In this regard he relies on the judgment dated 16.01.2012 passed by Hon'ble The Supreme Court of India in Criminal Appeal No.159 of 2012 titled as **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382. Charges have been framed on 20.04.2023, however, the prosecution evidence is yet to commence. In all, there are 12 prosecution witnesses.

3. Learned State counsel opposes the bail on the ground that the

petitioner was apprehended at the spot and non-commercial quantity of contraband has been recovered from him. There is one more case against the petitioner, which involves recovery of non-commercial quantity of contraband. He is however unable to controvert the submissions with regard to custody, stage of trial and that he is on bail in the other case.

4. Heard.

5. Hon'ble The Supreme Court of India in the case of **Maulana Mohd. Amir Rashadi** (*Supra*) had observed as under:-

“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.”

6. In view of the facts and circumstances of the case, observations made in the aforesaid judgment and in particular that the petitioner is in custody for the last 6 months and 18 days; non-commercial quantity of contraband has been recovered from him, therefore, rigors of Section 37 of NDPS Act are not attracted in the present case; though the charges were framed on 20.04.2023, however, the prosecution evidence is yet to commence; in all, there are 12 prosecution witnesses; the trial is likely to take a considerable time, his further detention behind bars would not serve any useful purpose, thus the present petition for grant of regular bail deserves to be allowed.

7. As a result, the present petition is allowed. The petitioner is ordered to be released on regular bail, subject to his furnishing bail/surety bonds to the satisfaction of trial Court/Duty Magistrate concerned and subject to him not being required in any other case. The petitioner shall abide by the following conditions:-

1. The petitioner will not tamper with the evidence during the trial.
 2. The petitioner will not pressurize/ intimidate the prosecution witnesses.
 3. The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
 4. The petitioner shall not commit an offence similar to the offence of which, he is an accused, or for commission of which he is suspected of.
 5. The petitioner shall not directly or indirectly coerce, induce, threaten or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the Court or to any police officer or tamper with the evidence in any manner.
 6. The petitioner shall not in any manner misuse his liberty.
 7. The petitioner shall furnish his address and mobile number to the Trial Court forthwith and shall not change the same till the conclusion of the trial and in case for any reason, the petitioner seeks to change any of the aforesaid, the same shall be done only with prior intimation to the learned Trial Court, stating the reason for the same.
 8. The petitioner shall deposit his passport, if any, with the Trial Court forthwith and in case, he does not have the passport, he shall furnish a specific affidavit in this regard.
8. It is made abundantly clear that in case there is any breach of the aforesaid conditions, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.
9. In view of the above, this Court makes it clarified that the observations made herein above are limited for the purpose of present proceedings and would not be construed as any opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

(AMAN CHAUDHARY)
JUDGE

April 26, 2023

M.Kamra

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>