

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

223

CRM-M-9552-2023 (O&M)
Date of decision: 29.08.2023

Rajinder Kumar @ Raju

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Gurpal S. Sandhu, Advocate for the petitioner.

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 439 Cr.P.C. is for grant of regular bail to the petitioner in case FIR No.176 dated 30.12.2022, registered under Sections 21 and 29 of NDPS Act, 1985 at Police Station City Fazilka, District Fazilka.
2. Learned counsel contends that the petitioner is in custody for almost 8 months, having been arrested on 30.12.2022. The alleged recovery that was effected from him, is of 25g of heroin, from a polythene bag, which was stated to have been thrown by him on the ground. The mandatory provisions of Sections 42 and 50 of the NDPS Act were not complied with. No independent witness was joined at the time of alleged recovery, despite the fact that recovery is stated to be effected from a thoroughfare. Challan stands presented on 24.02.2023, however, charges have not been framed and in all there are 8 prosecution witnesses. He is involved in one more case under the NDPS Act, wherein his sentence has

been suspended. Reliance is placed on the judgment of Hon'ble The Supreme Court in **Maulana Mohd. Amir Rashadi vs. State of U.P. and others**, 2012(2) SCC 382.

3. Learned State counsel opposes the bail on the ground the intermediate quantity of contraband was recovered from the petitioner. She is however unable to controvert the submissions made regarding custody, stage of the case and sentence of the petitioner being suspended in the other case.

4. Heard.

5. Hon'ble The Supreme Court in the case of **Maulana Mohd. Amir Rashadi** (Supra) had held that, “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 the possibility of fleeing away from the jurisdiction of the Court etc.”

6. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 8 months; on bail in other case; 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; challan was presented on 24.02.2023, however, charges are yet to be framed and in total there are 8 PWs; the trial is likely to take a considerable time, thus his further incarceration would not serve any useful purpose, 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 his not being required in any other case. The petitioner shall abide by the following conditions:-

- (i) The petitioner will not tamper with the evidence during the trial.
- (ii) The petitioner will not pressurize/ intimidate the prosecution witnesses.
- (iii) The petitioner will appear before the trial Court on each and every date fixed, unless is exempted by a specific order of Court.
- (iv) 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.
- (v) 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.
- (vi) The petitioner shall not in any manner misuse his liberty.
- (vii) 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.
- (viii) The petitioner shall not leave the country without prior permission of the trial Court.
- (ix) The trial Court/Duty Magistrate may impose any other condition, as deemed appropriate while releasing the petitioner.

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, it is clarified that the observations

made herein are limited for the purpose of present proceedings and would not be construed as an opinion on the merits of the case and the trial would proceed independently of the aforesaid observations.

29.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No