

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

222

CRM-M-25229-2023 (O&M)

Date of decision: 14.07.2023

Jagtar Chand

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. R.P. Dhir, Advocate for the petitioner

Ms. Himani Arora, AAG 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 case FIR No.137 dated 08.07.2022, registered under Sections 21, 29, 61 and 85 of NDPS Act, at Police Station Tibba, District Ludhiana.

2. Learned counsel contends that the petitioner is in custody for the last 1 year. He was apprehended while he was found walking alongwith two of his co-accused and allegedly 250 grams of heroin was recovered from each of them recorded vide separate memos, thus, cannot be termed to be a joint recovery. Both his co-accused have been granted regular bail by this Court vide orders dated 03.02.2023 and 21.04.2023, Annexures P-3 and P-4, respectively. Challan stood presented on 17.10.2022, however, charges have not been framed. In all there are 15 prosecution witnesses. There is one more case pending against the petitioner. In this regard, 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. The custody certificate dated 13.07.2023 has been filed by learned State counsel, as per which, the petitioner is behind bars for the last 1 year and 1 day.

4. Learned State counsel opposes the bail on the ground that the petitioner along-with co-accused were found walking for the delivery of the contraband at a particular place, when they were apprehended and 250 grams of heroin was recovered from their respective pockets and there is involvement of petitioner in one more case. She is however unable to controvert the submissions with regard to stage of the case, co-accused having been granted regular bail and that non-commercial quantity of contraband has been recovered from the petitioner.

5. Heard.

6. 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 possibility of fleeing away from the jurisdiction of the Court etc."

7. Considering the facts and circumstances of the case, in particular that the petitioner is in custody for the last 1 year and 1 day; recovery effected from him is non-commercial, therefore, rigors of Section 37 of NDPS Act are not attracted; co-accused having been granted bail; challan has been presented on 17.10.2022, however, charges are yet to be framed; in all there are 15 prosecution

witnesses; 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.

8. 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.

9. 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.

10. 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.

July 14, 2023
M.Kamra

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No