

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

226

CRM-M-30861-2023 (O&M)

Date of decision: 17.08.2023

Suresh Yadav

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Parminder Singh Sekhon, Advocate for the petitioner.

Mr. Baljinder Singh Virk, Sr. DAG, Haryana.

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 FIR No.08 dated 11.01.2023, registered under Sections 18, 27-A and 29 of NDPS Act, at Police Station Bhuna, District Fatehabad.

2. Learned counsel contends that the petitioner is in custody for the last 8 months. Non-commercial quantity of contraband has been allegedly recovered from the polythene bag which was in the hands of co-accused Virender Yadav, containing 2 kg and 35 grams of opium. The said co-accused has been granted regular bail by this Court vide order dated 21.07.2023. Co-accused Umesh Kumar apprehended at the spot along with the petitioner was also granted regular bail by this Court vide order dated 17.05.2023, Annexure P3, after custody for 4 months. The mandatory provisions of Sections 42 and 50 NDPS Act were not complied with while effecting recovery. Challan was presented on 11.03.2023,

however, charges are yet to be framed and in all there are 16 prosecution witnesses. The petitioner is involved in one more case involving non-commercial quantity wherein he is on bail. 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 that the petitioner was apprehended at the spot along with his co-accused and they were found in possession of 2 kg and 35 grams of opium. He is however unable to controvert the submissions made regarding the custody, stage of the case, co-accused having been granted bail and petitioner being on bail in the another 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 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 last about 8 months; on bail in other case; co-accused have been granted bail; recovery being non-commercial quantity of contraband, therefore, rigors of Section 37 of NDPS Act are not attracted in the present case; though challan stands presented on 11.03.2023, however, charges are yet to be framed and in all there are 16 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.

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.

17.08.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No