

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

209

CRM-M-53580-2022 (O&M)
Date of decision: 03.02.2023

DURGA SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rishu Mahajan, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

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.221 dated 19.09.2022, under Sections 21/29 of NDPS Act, registered at Police Station STF District SAS Nagar, Mohali.

Learned counsel contends that the petitioner is in custody since 22.09.2022 and non-commercial quantity of contraband as per the Schedule of the NDPS Act has been recovered from the dicky of motor-cycle and not from the person of the petitioner. Still further, the petitioner was a pillion rider of the said motor-cycle. Challan was presented on 17.11.2022 and now the case is fixed for 01.03.2023 for framing of charges. In all there are 15 prosecution witnesses.

Learned State counsel has produced the custody certificate dated

02.02.2023, which is taken on record, as per which the custody of the petitioner is 4 months and 13 days. He opposes the bail on the ground that the petitioner is involved in 5 other cases of NDPS Act. However, he is unable to controvert the submissions made by learned counsel for the petitioner regarding the status of the trial.

Learned counsel for the petitioner in response thereto submits that out of 5 other cases of NDPS Act, the petitioner has been acquitted in 2 cases, in one case, he has already undergone the sentence and in the remaining 2 cases, he is on bail, which involves non-commercial quantity of contraband allegedly recovered from him. 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.***

Heard.

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.”

In view of the facts and circumstances of the case, in particular that the petitioner is in custody since 22.09.2022; non-commercial quantity of contraband was recovered from the dicky of the motorcycle on which the petitioner was a pillion rider; challan had been presented on 17.11.2022, however, charges are yet to be framed; in all there are 15 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.

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.

It is made abundantly clear that in case there is any breach of the aforesaid conditions and in case he commits similar offence in future, the State shall be at liberty to seek cancellation of bail as granted to the petitioner by this order.

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

February 03, 2023

M.Kamra/S.Sharma(syr)

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