IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1285 of 2020
Reserved on: 11.11.2020
Decided on: 12.11.2020

Kanta ....Petitioner

Versus

Narcotics Control Bureau ...Respondent

Coram
The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.
Whether approved for reporting?[1] Yes.

For the petitioner: Mr. Jeevesh Sharma and Mr. S.K. Agnihotri, Advocates.

For the respondent/State: Mr. Ashwani Pathak, Sr. Advocate, with Mr. Sandeep Sharma, Advocate.

Chander Bhusan Barowalia, Judge.

The matter is taken up through video conference.

2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking her release in Crime No. 26 of 2019, dated 28.05.2019, under Sections 8, 20 and 29 of the ND&PS Act, registered by Narcotic Control Bureau, Sub-Zone, Mandi, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. She is permanent resident District Kullu, H.P., thus neither in a position to tamper with the prosecution evidence nor in a position to flee from

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

justice. No fruitful purpose will be served by keeping her behind the bars for an unlimited period, so she be released on bail.

4. Reply to the petition stands filed. In a nut-shell, the case of the NCB is that on 28.05.2019 a secret information was received in the office of NCB, Chandigarh, qua one Jagdish Kumar (co-accused) involved in drug trafficking and delivery of huge quantity of *charas* to one Munish Kumar (co-accused) by him. Acting upon the information, NCB, Chandigarh, constituted a team for taking action as per the law. On 28.05.2019, around 08:30 p.m., the above team reached Sundernagar and intercepted car, having registration No. HP32A-4988, which was being driven by co-accused Munish Kumar. Co-accused Munish Kumar disclosed that he is waiting for his friend, so he was detained. Subsequently, vehicle, having registration No. HP32A-4776, was stopped and its driver disclosed his name as Jagdish Kumar (co-accused). Thereafter, Investigating Officer of the NCB Team disclosed his identity and co-accused divulged that a consignment of *charas* is in his car, which he was to deliver to co-accused Munish Kumar. The NCB team associated two independent witnesses and in their presence, from vehicle No. HP32A-4776, recovered 33 packets, each packet was wrapped with white transparent polythene packet and inside the packets there was some dark brown substance in round shape, which was *charas.* On weighment, the total contraband was 19.350 Kgs. Thereafter, the NCB team completed all the codal formalities. The co-

accused persons were arrested and during the course of interrogation they divulged that co-accused Jagdish received the contraband from one Raj at the instance of one Kanta (petitioner herein) and they paid her Rs.7,00,000/- (rupees seven lac). In sequel, on 29.05.2019, the NCB team alongwith independent witnesses reached the house of the petitioner and the petitioner disclosed her identity as Kanta (petitioner). During the search, Rs. 7,78,000/- were recovered from the petitioner and the said money was kept in a transparent polythene packet. A passport in the name of one Rajkumar was also recovered and said Rajkumar was arrested by NCB, Chandigarh, in connection with NCB Cr. No. 49 of 2018, and was in judicial custody at Chandigarh. Thereafter, the NCB team completed all the codal formalities. During the course of investigation, the petitioner divulged that she obtained the contraband from one Raj of Rashol and revealed his mobile number. However, upon inquiry no such person was found in the area of Rashol. As per the NCB, accused persons Jagdish Kumar, Munish Kumar and Kanta (petitioner herein) were involved in drug trafficking. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found actively involved in transporting 19.390 kgs of *charas,* which is a commercial quantity. In case the petitioner, at this stage, is enlarged on bail, there is every possibility that she may flee from justice or tamper with the prosecution witnesses, so the bail application may be dismissed.

5. I have heard the learned Counsel for the petitioner, learned Senior Counsel for the NCB and gone through the records, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as she is permanent resident of District Kullu, H.P. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, the petitioner is a lady and thus cannot be kept behind the bars for an unlimited period. He has further argued that the custody of the petitioner is not at all required by the NCB for further investigation, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Senior Counsel for the NCB has argued that the petitioner was found involved in illegally transporting 19.350 kgs of *charas,* which is a commercial quantity. He has further argued that a sum of Rs. 7,78,000/- was also recovered from her and co-accused Jagidsh Kumar, during the course of interrogation, divulged that he had paid Rs. 7,00,000/- to the petitioner in lieu of the contraband, so the petitioner is the main kingpin in the commission of the offence and thus cannot be enlarged on bail. He has argued that in case the petitioner is enlarged on bail, at this stage, she may flee from

justice, or tamper with the prosecution evidence. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is behind the bars for the last approximately one and half years and she cannot be kept behind the bars for an unlimited period, especially when she is a lady, investigation is complete and now nothing remains to be recovered at her instance, so the application be allowed and the petitioner be enlarged on bail. In order to support his arguments, the learned counsel for the petitioner has drawn attention of this Court to the following judicial pronouncements:

1. ***Sarija Banu vs. State through Inspector of Police, 2004(12) SCC 266; &***
2. ***Khekh Ram vs. Narcotics Central Bureau & another, Criminal Appeal No. 450 of 2016, decided by this High Court on 29.12.2017.***

8. At the very outset, it would be profitable to examine the above cited judgments. The Hon'ble Apex Court in ***Sarija Banu's*** case (supra) granted bail to the bail petitioner, as it was found that there was serious violation of Section 42 of the ND&PS Act, in that case, whereas, in the case in hand, at this stage, it cannot be said that there is violation of any of the provisions of ND&PS Act or not, so the judgment (supra) is of no help to the petitioner. This High Court in

Khekh Ram's case (supra) allowed the appeal preferred by the accused/appellant and acquitted him. Now, it is important to note here that criminal trials, resultant first appeals and second appeals are clearly distinguishable from petitions seeking bail. So, the petitioner cannot reap any benefit out of the judgment rendered by this Court in ***Khekh Ram's*** case (supra).

9. In bail petitions there can never be a straight-jacketed formula or fixed pre-drawn line of law for granting or refusing bail. Each and every petition, seeking bail, has to be seen with the magnifying lenses of facts and circumstances of that particular case. The vital aspects in granting or refusing bail can be the possibility of accused's fleeing, in case the bail is granted, the possibility of the accused's tampering with the prosecution evidence, the gravity and seriousness of the offence, the manner in which the same is alleged to have been committed etc. etc. and there may be innumerable other aspects/reasons for granting or refusing bail. Thus, no straight-lined formula can be adhered to in granting or refusing bail and each case has to be tested with the valuable aid of its own facts and circumstances, vis-à-vis, some other important aspects and law.

10. At this stage, considering the quantity of *charas* recovered, which is 19.350 kgs, which is a commercial quantity, the active involvement of the petitioner in the alleged offence, as emanates from the records that it was the petitioner, who is main kingpin in the

alleged offence, considering the fact that a sum of Rs. 7,78,000/- was recovered from her possession and also the fact that one of the accused persons, viz., Jagdish Kumar divulged that he procured the *charas* from the petitioner after paying her Rs. 7,00,000/-, considering the facts that in case the petitioner is enlarged on bail, she may tamper with the prosecution evidence or flee from the justice, and considering all other vital aspects, which emerge, and without discussing the same elaborately at this stage, this Court is of the opinion that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in her favour.

11. In view of the foregoing discussions, the petition, which sans merits, deserves dismissal and is accordingly dismissed.

12. Needless to say that the observations made hereinabove are only confined for the adjudication of the instant petition and shall have no bearing, whatsoever, on the merits of the main case, which shall be adjudicated on its own.

(Chander Bhusan Barowalia)
Judge

12th November, 2020
(virender)