IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.1729 of 2020
Decided on: 16.12.2020

Khadak Bahadur ….Petitioner.

Versus

State of Himachal Pradesh …Respondent.

Coram
Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
Whether approved for reporting?[1] No

For the petitioner : Mr. B.N. Sharma, Advocate.

For the respondent : Mr. Sumesh Raj and Mr. Sanjeev Sood, Additional Advocates General, with Ms. Divya Sood, Deputy Advocate General. (Through Video Conferencing)

Ajay Mohan Goel, Judge (Oral)

By way of this petition, filed under Section 439 of the Criminal Procedure Code, a prayer has been made for release of the petitioner on bail, in F.I.R. No.112 of 2019, dated 17.11.2019, registered against him at Police Station Arki, District Solan, H.P., under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to 'ND & PS Act' for short).

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Whether reporters of the local papers may be allowed to see the judgment?

2. Learned counsel for the petitioner has argued that the petitioner is innocent and he has been falsely implicated in this case. He further submits that petitioner does not has any previous criminal history. He states that the petitioner was arrested on 17.11.2019 and since then, he is in police custody. He further submits that though the challan was filed as far back as in the month of January, 2020, yet the proceedings have not substantially gained momentum thereafter, as a result whereof, the petitioner is languishing in custody. He further submits that in the event of grant of bail, the petitioner shall abide by the conditions which may be imposed upon him and he shall not jump the bail.

3. Opposing the bail petition, learned Deputy Advocate General has argued that taking in consideration the fact that the petitioner was caught red handed in conscious possession of 740 grams of Charas, present petition be dismissed, as was also the fate of earlier application filed by the petitioner, for the reason that not only the offence alleged against the petitioner is grievous, further as the petitioner happens to be a citizen of Nepal, there is each and every possibility that in the event of allowing of the bail petition, he may flee

the country and thus evade the trial. She has further argued that as there is each and every possibility of the petitioner influencing the prosecution witnesses in the event of grant of bail, therefore also this bail petition deserves to be dismissed.

4. Learned counsel for the petitioner, on instructions, states before the Court that in the event of the petitioner being released on bail, he shall not leave the territorial jurisdiction of the State of Himachal Pradesh without the leave of the Court.

5. I have heard learned Counsel for the parties and have gone through the documents appended with the petition as well as status report, which has been filed by the State.

6. There is on record an order dated 03.03.2020, passed by the Court of leaned Special Judge-III, Solan, District Solan, H.P. in Bail Application No.18ASJ-II/22 of 2020, titled as Khadak Bahadur Versus The State of Himachal Pradesh, vide which earlier application filed by the petitioner was dismissed. The Court has also been informed that an earlier petitioner filed by the petitioner before this Court for grant of regular bail was withdrawn by him. The petitioner is stated to be in custody since 17.11.2019 and as per the status report, challan was filed

before learned Court below on 08.01.2020. Since then as has been pointed out by learned counsel for the petitioner, the case has not made any progress and the Court stands informed that when the case was last listed on 20.11.2020, a date has been fixed for consideration of the charge sheet.

7. In these circumstances, keeping in view the fact that the quantity allegedly recovered from the possession of the petitioner happens to be intermediate quantity of Charas and further the petitioner does not has any previous history of being involved in similar activities, this petition is allowed, as no further investigation or recovery etc. is to be effected from the petitioner. Further, the statement of learned counsel for the petitioner that petitioner shall not leave the territorial jurisdiction of the State of Himachal Pradesh before the end of the trial without the leave of learned Court below is taken on record. The apprehension of the State that the petitioner may influence the witnesses is being taken care of by this Court by giving liberty to the State to approach this Court for cancellation of the bail, in case petitioner flouts the bail conditions.

8. Accordingly, this petition is allowed, by ordering the release of petitioner on bail in F.I.R. No.112 of 2019, dated 17.11.2019, registered against him at Police Station Arki, District Solan, H.P., under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985, on his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:-

> *i) Petitioner shall attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;*
>
> *ii) He shall not tamper with the prosecution evidence;*
>
> *iii) He shall not make any inducement, threat or promise to any person acquainted with the facts of the case.*
> *iv)Undertaking of the petitioner through Counsel is taken on record that the petitioner shall not leave the territorial limits of the State of H.P. without the permission of learned Trial Court.*

9. It is clarified that the findings which have been returned by this Court while deciding this petition are only for the purpose of adjudication of the present bail application and learned trial Court shall not be influenced by any of the findings so returned by this Court in the

adjudication of this petition during the trial of the case. It is further clarified that in case the petitioner does not complies with the conditions which have been imposed upon him while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of the bail. The petition stands disposed of in the above terms.

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(Ajay Mohan Goel)
Judge

December 16, 2020
(Rishi)