IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1747 of 2020
Reserved on: 08.12.2020
Decided on: 14.12.2020

Megh Singh ....Petitioner

Versus

State of Himachal Pradesh ...Respondent

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

For the petitioner: Mr. Mandeep Chandel, Advocate.

For the respondent/State: Mr. Gaurav Sharma, Deputy Advocate General.

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 his release, in case FIR No. 23 of 2019, dated 01.12.2019, under Section 20 of the ND&PS Act, registered in Police Station Bhunter, District Kullu, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident of District Mandi and 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?

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

4. Police report stands filed. As per the prosecution story, on 31.10.2019, at about 10:15 p.m., police team was present at TCP Bajaura for traffic checking and had laid Naka there. At about 10:30 p.m., police stopped a Volvo Bus bearing No.DLIPC-4550, which was coming from Bhunter side. On inquiry, driver and conductor revealed their names as Vintu Khanna and Sumit Kumar, respectively. HC Tilak Raj No.24 and C. Sunil Mahant No.395 boarded the bus and carried on search of the passengers as well as their luggage and during this process, when they reached at seats No.1 and 2, the passengers sitting there got perplexed and tried to hide something under their legs in the seat. On asking, they could not give satisfactory answer and disclosed their names as Megh Singh, S/o Sh. Sangat Ram, R/o Village Sharanala, PO Thalout and Talve Ram, S/o Viru Ram, R/o Village Kashna, PO Thalout. Upon checking the briefcase, lying under their legs, five packets, wrapped with yellow cello tape, were recovered. On suspicion of some contraband, they were taken to TCP room by the police, where all the five packets were opened in the presence of driver and conductor. From these packets, nine transparent polythene packets were recovered, which were found to be containing black coloured substance in the shape of chapattis and on smelling, it was detected to be charas. On weighment, it was found to be 2 Kg 225

grams. Thereafter, the police completed all the codal formalities. Police prepared the spot map, recorded the statements of the witnesses and registered a case against the petitioner. The petitioner was arrested and during the course of interrogation he divulged that they have collected charas from the forest and were going to Delhi for selling it to someone. The contraband, on chemical examination, was found to be sample of charas. As per the police, investigation in case is complete and challan stands presented in the learned trial Court. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found involved in a serious offence. The petitioner, at this stage, in case enlarged on bail, may tamper with the prosecution evidence and may flee from justice, so the bail application may be dismissed.

5. I have heard the learned Counsel for the petitioner, learned Deputy Advocate General for the State and gone through the record, including the police report, 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 permanent resident of District Mandi and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when nothing remains to be recovered at his instance, investigation is complete, challan stands

presented in the learned Trial Court, custody of the petitioner is not at all required by the police, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Deputy Advocate General has argued that the petitioner has committed a serious offence. He has further argued that the petitioner was nabbed by the police when he was in exclusive and conscious possession of 2 Kg 225 grams of charas and in case the petitioner is enlarged on bail, he may flee from justice, may tamper with the prosecution evidence and may again indulge in such activities. He has argued that the trial is yet to begin, so the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is permanent resident of District Mandi, thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, nothing is to be recovered at his instance, custody of the petitioner is not at all required by the police, as the investigation is complete and challan stands presented in the learned Trial Court, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the quantity of the recovered contraband, which is 2 Kg 225 grams, thus a commercial quantity, the manner in which the same is alleged to have been recovered from the exclusive and conscious possession of the petitioner, the fact that in case the petitioner is, at this stage, enlarged on bail, may flee from

justice, tamper with the prosecution evidence and may again indulge in such type of activities, also considering the fact that the trial is yet to begin, the fact that the records suggest that the petitioner had knowledge that the packets contain charas and 2 Kg 225 grams of charas cannot, even for the sake of imagination, be kept by the petitioner for his own use, considering all the facets of the case and without discussing the same at length, at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

9. In view of what has been discussed hereinabove, the petition sans merits, deserves dismissal and is accordingly dismissed.

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

(Chander Bhusan Barowalia)
Judge

December14, 2020
(R.Atal)