IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 2094 of 2020

Date of decision: December 24, 2020.

Jeet Ram .....Petitioner.

Versus

State of Himachal Pradesh .....Respondent.

Coram

Ms. Justice Jyotsna Rewal Dua, *Judge.*

Whether approved for reporting?[1]

For the petitioner : Mr. Ramesh Chand Sharma, Advocate.

For the respondent : Mr. Anil Jaswal, Addl. AG with Mr. Manoj Bagga, Assistant AG.

(Through Video Conferencing)

Jyotsna Rewal Dua, *Judge (Oral)*

FIR No. 204/2019 has been registered on 29.9.2019, under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' in short) at Police Station, Bhuntar, District Kullu. Petitioner is accused of supplying 3.382 Kg. of cannabis to the main accused Joseph Shobal. He is in custody w.e.f. 6.10.2019 and prays for release on bail.

2. An earlier bail application Cr.MP(M) No. 926 of 2020 instituted by him was withdrawn on 2.7.2020. The second bail

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

application Cr.MP(M) No. 1494 of 2020 was dismissed with reasoning vide judgment dated 17.9.2020. Instant is petitioner's third successive bail application.

3. This third successive bail application has been filed on the grounds:-

(i) Petitioner has been falsely implicated in the FIR.

(ii) The call detail report linking the petitioner with the FIR has not been made part of challan.

(iii) The trial has been delayed.

On the above grounds, prayer for enlargement on bail has been made by submitting that petitioner will abide by all the terms and conditions, which may be imposed upon him.

Learned Additional Advocate General has vehemently opposed the prayer by submitting that the grounds raised in the instant bail application have already been considered while rejecting Cr.MP(M) No. 1494 of 2020. No change in the grounds has been made out in the instant petition. Petitioner is accused of supplying 3.382 Kg. of cannabis i.e. commercial quantity of contraband to the main accused. He is accused of serious offences under the NDPS Act for possessing commercial quantity of contraband affecting the society at large. The trial is at initial stage, therefore, his release at this stage will materially affect the trial as the petitioner alongwith others involved will influence the prosecution witnesses. Learned Additional Advocate General

also stated that call detail report linking the petitioner with the offences alleged in the FIR is part of police report presented before the Court of competent jurisdiction under Section 173(2) of Code of Criminal Procedure.

4. The ground with respect to applicability of Section 37 of NDPS Act and alleged false implication of the petitioner has already been considered in the judgment dated 17.9.2020 rejecting petitioner's bail application Cr.M.P(M) No. 1494 of 2020. The judgment was passed after hearing learned counsel for the parties and after perusing the records. Bare minimum relevant extracts from the judgment are as under:-

> ***"4.*** *Learned Counsel for the petitioner strenuously argued that the status report filed by the respondent before the learned trial Court is at variance with the status report filed in the instant case in as much as the status report filed before the learned trial Court stated that Joseph Shobal had named one Dharam Chand as supplier of contraband and not the present bail petitioner Jeet Ram. Learned Counsel also submitted that mobile number in question 7807703025 actually belonged to Dharam Chand and not to the petitioner. Therefore, he contended that present is a case of mistaken identity where petitioner has been falsely implicated.*
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> *Learned Assistant Advocate General strongly opposed the bail petition. He submitted that as per record, Joseph Shobal had disclosed procuring the contraband through Mohsin from a supplier whose mobile No. was 7807703025. Joseph Shobal had also disclosed that he was himself not aware about the identity of the supplier. On the basis of this disclosure by Joseph Shobal, Call Details Reports were collected by the Investigating agency of three mobile numbers in question i.e. belonging to Joseph Shobal, of Moshin and of No. 7807703025. The Call Detail Reports revealed that calls were exchanged amongst these three mobile numbers w.e.f. 26.9.2019 to 28.9.2019. The person who was using mobile sim no. 7807703025 was found to be the petitioner*

> *i.e. Jeet Ram. The mobile No. 7807703025 was actually in possession of the petitioner and was being used by him, even at the time when he was nabbed by the investigating agency. Calls from this sim number were made from IMEI No. 354182104158140 belonging to the phone used by the petitioner. The status report earlier filed before the learned trial Court at the initial stage of investigation, did not depict the correct position which emerged after the investigation of the case. At that stage only the identity from the Truecaller App was mentioned which reflected the name of person in whose favour mobile number 7807703025 was registered. Challan has been presented before the competent Court on 18.7.2020.*
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> ***5.*** *The record, inclusion of the zimni orders supports the submission of learned Assistant Advocate General. As per the record, the mobile No. 7807703025 was being used by the bail petitioner. As per status report, petitioner during investigation had admitted to growing, cultivating the cannabis crop and supplying it to Joseph Shobal through Mohsin for consideration of ₹4,80,000/-. The contraband in question weighed 3 kg 382 grams, which falls in the commercial quantity notified under the NDPS Act. Therefore, rigors of Section 37 of the NDPS Act will be applicable.....*
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> *.....In view of facts as have come out in the status report and the record, it cannot be said at this stage that there are no reasonable grounds to believe that petitioner is not guilty of the offence of selling 3 kg 382 grams of cannabis. Status report also indicate a previous case No. 94/2019 registered against the petitioner under Section 20 of the NDPS Act."*

5. In respect of submissions made by learned Counsel for the petitioner that CDR has not been made part of the police report filed under Section 173(2) of the Code of Criminal Procedure, learned Additional Advocate General has already apprised that this is factually correct submission and CDR is part of the challan.

The FIR was registered on 29.9.2019 and petitioner was arrested on 6.10.2019. He is accused of supplying 3.382 Kg.

of cannabis. The petitioner has previous criminal history under the NDPS Act, as noticed in the judgment dated 17.9.2020 dismissing his earlier bail application Cr.MP(M) No 1494 of 2020. The trial is at stage of infancy. The release of the petitioner at this stage will not only be in contravention to the provisions of Section 37 of NDPS Act but possibility of his influencing prosecution witnesses and thereby prejudicing the trial cannot be ruled out at this stage. Grounds raised and circumstances pointed out in this petition have already been taken note of while rejecting his previous bail application. There is no substantive change either in the grounds or in the circumstances. Hence, being devoid of any merit, the petition is dismissed.

It is clarified that observations made above are confined only for the adjudication of instant petition and shall have no effect on the merits of the matter.

Jyotsna Rewal Dua
Judge.

December 24, 2020,
(*vs)*