IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) Nos. 2054 and 2056 of of 2020

Judgment reserved on 14th Dec.,2020

Date of Decision 22nd Dec.,2020

Cr.MP(M) No. 2054 of 2020

Suresh Kumar ***…Petitioner***

Versus

State of H.P. ***….Respondent***

Cr.MP(M) No. 2056 of 2020

Dev Dutt ***….Petitioner***

Versus

State of H.P. ***….Respondent***

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The Hon'ble Mr. Justice Vivek Singh Thakur, J.

Whether approved for reporting?[1]

For the Petitioner(s): Mr. Manoj Pathak, Advocate, through Video Conferencing.

For the Respondent(s): Mr. R.P. Singh, Deputy Advocate General, through Video Conferencing.

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

Vivek Singh Thakur, J.

Both these petitions are being disposed of by this common judgment, as they arise out of same FIR.

2 Petitioner in each petition has approached this Court for regular bail, under Section 439 Cr.P.C., in case FIR No. 69 of 2020, dated 13.10.2020, registered in Police Station Chopal, District Shimla, H.P.

3 Status report(s) stand filed, wherein it is stated that on 13.10.2020 police party, during patrolling near Khagana curve on Thundna road, had noticed three persons standing on road without mask and when police party stopped the vehicle with intention to ask them the reason for not wearing mask, all of these three persons had started running towards Thundna road, whereupon, on suspicion all three were chased and apprehended and during that time, one of them, who, later on, was identified as Som Dutt Sharma, had thrown a carry bag below the road. Other two persons were petitioners namely Suresh Sharma and Dev Dutt.

4 As per status report, on inquiring the reason of throwing the carry bag below the road, Som Dutt became perplexed and could not give reasonable explanation for that, which cast a doubt that there must be some suspicious article in

the said bag. Therefore, Constable Dinesh Kumar was sent for calling an independent witness towards Khagana bridge as on the spot there was none. After about seven minutes, Constable Dinesh Kumar had returned along with one Sant Ram, who was associated in the search and seizure proceedings, and thereafter, after complying with provisions of law, carry bag was opened, wherein, substance in the shape of sticks and balls was found. On smelling and on the basis of experience, it was identified to be charas. On weighing, it was found 972 grams. Thereafter, it was seized by preparing seizure memo and ruka was sent to Police Station for registration of FIR. Thereafter, investigation was carried on by ASI Chaman Lal on spot and he had also arrested the petitioners at 4.35 PM on spot. During investigation, recovered contraband was sent for chemical analysis to State FSL Junga and in report, received from State FSL, it was confirmed that recovered contraband was cannabis (charas).

5 Petitioners have also filed bail applications before learned Special Judge, Shimla, which were dismissed on 11.11.2020. After remaining in police custody, petitioners are in judicial custody.

6 It is also stated in status report that houses of accused persons were also searched and nothing objectionable

was found there. As per prosecution case, accused persons had disclosed that they had extracted charas from Government forest about 3-4 months ago during Lockdown and they were going to sell it to the unknown persons/drivers.

7 It is the case of prosecution that charas about 972 grams has been recovered from bag carried by Som Dutt Sharma and it was thrown in presence of police party by co-accused Som Dutt Sharma and he was perplexed when reason for throwing the bag was asked by police party. Petitioners have been implicated on the basis of their alleged confession that all of them had collectively extracted the charas from Government forest. As charas has been recovered from bag of Som Dutt Sharma, petitioners/accused have been arrayed as accused under Section 29 of NDPS Act.

8 Case of petitioners and their alleged role is different from Som Dutt Sharma, who, as per prosecution story, is the person from whose bag 972 grams charas has been recovered. In status report, no previous history, regarding involvement of petitioners in any criminal case, has been reported much less in a case of similar nature. Involvement of accused/petitioners under Section 29 of NDPS Act, as alleged, is yet to be established in trial. No doubt, charas recovered is nearer to commercial

quantity, but, at the same time, it is a fact that charas has been alleged to have been recovered from the bag of Som Dutt Sharma and petitioners have been stated to be standing with him on road. Case of petitioners is on different footing than Som Dutt Sharma. Therefore, they can be treated differently than Som Dutt Sharma.

9 The petitioners, in case of bail, have undertaken to abide by any condition imposed by Court and it is stated that they are permanent residents of village Karoti, P.O. Sari, Tehsil Chopal, District Shimla (H.P.) and are settled in said village permanently and having sufficient property and therefore, there is no possibility of petitioners of fleeing from justice.

10 In view of aforesaid facts and circumstances of the case, I consider that at this stage petitioners are entitled to be enlarged on bail in case FIR No. 69 of 2020 registered at P.S. Chopal. Therefore, the petitioners are ordered to be released on bail, subject to furnishing personal bond in the sum of Rs.75,000/- each with one surety each in the like amount to the satisfaction of the learned Special Judge, Shimla, within two weeks from today, subject to the following conditions:-

(i) That the petitioners shall make themselves available during investigation as well as the

trial on each and every date as and when required;

(ii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(ii) That they shall not obstruct the smooth progress of the investigation as well as trial;

(iii) That they shall not jump over the bail and shall inform, in writing, regarding change of address, land line number and/or mobile number, if any, in advance, to concerned Police Station.

(v) That the petitioners shall not commit the offence similar to the offence to which they are accused or suspected or the commission of which they are suspected.

(vi) That petitioners shall not misuse their liberty in any manner.

11 It will be open to the prosecution to apply for imposing any such other or further condition on the petitioners as deemed necessary in the facts and circumstances of the case and in the interest of justice. It will also be open to the trial

Court to impose any other or further condition on the petitioners as it may deem necessary in the interest of justice.

12 In case the petitioners violate any condition imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail in accordance with law.

13 Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No. HHC/VIG/Misc.Instructions/93-IV.7139 dated 18.3.2013.

14 Petitions stand disposed of. Any observation made in this order shall not affect the merits of case in any manner and will strictly confine for the disposal of these bail applications filed under Section 439 of Code of Criminal Procedure 1973.

Dasti copy on usual terms.

December 22,2020 **(Vivek Singh Thakur)**
(ms) **Judge**