IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No. 2084 of 2020
Decided on December 17, 2020

Karamjeet ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram:
The Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?[1] Yes.

For the petitioner Mr. Prashant Sharma, Advocate.

For the respondent Mr. Arvind Sharma, Additional Advocate General.

Sandeep Sharma, J. (Oral)

By way of present bail application filed under S.439 CrPC, prayer has been made by bail petitioner for grant of regular bail in FIR No. 145, dated 18.9.2020 registered at Police Station Paonta Sahib, District Sirmaur, Himachal Pradesh under Ss. 21 and 29 of the Narcotic Drugs & Psychotropic Substances Act.

2. Status report filed by respondent State in terms of order dated 26.11.2020 reveals that on 18.9.2020, police after having received secret information that a person namely Ashok Kumar, who works with present bail petitioner has gone to Haryana for consignment of drugs, laid Naka at Police check post Behral. At 6.05 pm, motorcycle bearing No. HP 17-A-8677 TVS being driven by Ashok Kumar was stopped for checking. Police party after giving their personal search carried out personal

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

search of Ashok Kumar as well as Motorcycle as detailed above, in the presence of independent witnesses and allegedly recovered 1800 capsules of PYN SPAS PLUS. Since no plausible explanation came to be rendered on record by Ashok Kumar for possessing aforesaid quantity of prohibited drugs, police after completion of necessary codal formalities, registered FIR as detailed above. During investigation, accused Ashok Kumar allegedly revealed that he is a tailor by profession but since now a days, there is no work on account of lockdown, he had gone to Haryana from Paonta Sahib for consignment of drugs. He disclosed to the police that present bail petitioner Karamjeet while giving him his motor cycle had asked him to go to Hathinikund to meet a person namely Devinder. He stated before police that bail petitioner Karamjeet had hired him for Rs.250/- on daily wages. He also alleged that bail petitioner Karamjeet had given his mobile number to Devender, who after his having reached Hathinikund telephoned him and delivered the consignment. In the aforesaid background, present bail petitioner came to be named in the FIR

3. On the basis of information disclosed by accused, Police investigated the involvement, if any of the bail petitioner and found that present bail petitioner and person namely Tinku had been talking to accused Ashok frequently while he had gone to Hathinikund for taking consignment of drugs. On 19.9.2020, Police investigated present bail petitioner and Tinku who

allegedly during investigation revealed that on 17.9.2020, Tinku had come to him for bringing consignment of drugs and as such, he had sent Ashok Kumar to Haryana. As per investigation, present bail petitioner gave Rs.12,800 to Tinku Kumar for transferring the same into bank account of Devender. Police also found that during aforesaid period, bail petitioner, Tinku Kumar and Ashok were in constant touch through telephone. In the aforesaid background, bail petitioner came to be arrested on 19.9.2020 and since then he is behind bars.

4. Mr. Arvind Sharma, learned Additional Advocate General, while fairly admitting factum with regard to completion of investigation contends that nothing remains to be recovered form bail petitioner but keeping in view the gravity of offence alleged to have been committed by the bail petitioner, his prayer for grant of bail deserves outright rejection. Mr. Sharma contends that there is overwhelming evidence available on record suggestive of the fact that bail petitioner is the kingpin, who taking advantage of adverse circumstance of Ashok Kumar made him go to Haryana for bringing consignment of drugs and as such, it can be safely concluded that the bail petitioner if enlarged on bail, may again indulge in such activities again and as such, his prayer for grant of bail may be rejected outrightly. Lastly, Mr. Sharma contends that since quantity of prohibited drug recovered in the case at hand, is commercial in nature,

present petition deserves outright rejection on account of bar contained under S.37 of Act.

5. Having heard learned counsel for the parties and perused material available on record this court finds that 1800 capsules of prohibited drug were not recovered form conscious possession of bail petitioner rather same were recovered from accused, Ashok Kumar, who subsequently disclosed to the police that he had gone to Haryana for fetching consignment of prohibited drugs on the askance of present bail petitioner. Though prosecution with a view to connect bail petitioner with the alleged crime has made an attempt to carve out a case that a sum of Rs.3,65,000/- in total was deposited in bank account of Devender Kumar by present bail petitioner through Tinku Kumar but status report itself suggests that aforesaid amount was transferred to the bank account of Devender Kumar from bank account of Tinku Kumar and at this stage, it is difficult to accept that amount of Rs.3,65,000/-, for purchase of consignment of prohibited drug was transferred in bank account of Devender Kumar by present bail petitioner. Allegedly Tinku Kumar disclosed to the Police that present bail petitioner Karamjeet and he (Tinku), after having collected money, deposited the same in Bank account of wife of Devender Kumar, but material available on record reveals that money, if any, was transferred either from bank account of co-accused Tinku Kumar or through Payphone

using mobile of Tinku Kumar. No doubt, Motorcycle allegedly used by Ashok Kumar for bringing consignment has been found to be in the name of present bail petitioner but that is not sufficient to prove complicity, if any, of bail petitioner in the commission of alleged offence. Though, the contraband allegedly recovered from the possession of Ashok Kumar is a commercial quantity and as such, rigors of S.37 of the Act are attracted but as has been taken note herein above, there appears to be no direct evidence to connect bail petitioner with alleged commission of offence. Mere fact that bail petitioner had given his motor cycle to Ashok Kumar and he was talking to him on his mobile, is not sufficient to prove complicity, if any, of bail petitioner at this stage as such, there appears to be no justification to keep him behind bars for an indefinitely period during trial, especially when there is no direct evidence against the bail petitioner.

6. Hon'ble Apex Court as well as this Court have held in a catena of judgments that a person is deemed to be innocent, till the time his/her guilt is proved in accordance with law, as such, there is no justification to let bail petitioner incarcerate in jail for an indefinite period during trial. Besides this, there is every likelihood of the trial being delayed on account of situations prevailing in the wake of Covid-19 pandemic and as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial. Apprehension expressed by

learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions.

7. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh** vs. **State of Uttar Pradesh & Anr** decided on 6.2.2018 has held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

> "2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.
> 3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.
> 4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence

> witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.
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> 5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons."

8. In **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)1 Supreme Court Cases 49, Hon'ble Apex Court has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his

trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

9. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

10. The Apex Court in **Prasanta Kumar Sarkar** versus **Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down the various principles to be kept in mind, while deciding petition for bail i.e. prima facie case against the accused, nature and gravity of offence, severity of punishment, likelihood of repeating of the offence by accused etc.

11. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.3,00,000/- with one local surety in the like amount, to the satisfaction of the Magistrate available at the station, besides the following conditions:

(a) He shall make himself available for the purpose of interrogation, if so required and regularly 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;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender passport, if any, held by him.

12. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

13. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this petition alone.

The petition stands accordingly disposed of.

(Sandeep Sharma)
Judge

December 17, 2020
(vikrant)