IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2097 of 2020

Date of Decision : December 29, 2020

Mukesh ....Petitioner

Versus

State of H.P. ....Respondent.

Coram:

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

Whether approved for reporting?

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

For the respondent-State : Mr. Desh Raj Thakur, Additional Advocate General, through Video Conferencing.

Vivek Singh Thakur, Judge (Oral)

Petitioner Mukesh has approached this Court for releasing him on bail, in case FIR No.85 of 2020, dated 16.9.2020, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act), in Police Station Parwanoo, District Solan, Himachal Pradesh.

2. As per Status Report, filed on behalf of respondent-State, petitioner, alongwith two others, on 16.9.2020 at 4.50 pm, was found travelling in Car No.HP01S-1917 from Chandigarh side towards Solan, wherefrom, during checking of the vehicle, 39.11 grams heroin was recovered from the space located in front of co-driver seat below the Dash Board. Following the procedure prescribed under law, recovered heroin was seized and taken in

possession, and Ruka was sent for registration of FIR and lateron petitioner, alongwith co-accused namely supriya and Ankush Thakur, was arrested at 9.30 pm, after getting permission from learned Additional Chief Judicial Magistrate, Kasauli.

3. During investigation, Call Detail Report of the phone of the petitioner as well as the co-accused has also been obtained. Tower location on 15.9.2020 of the mobile phones of the co-petitioners were found at Parwanoo and thereafter on 16.9.2020 in Haryana, Punjab and Delhi and on the same day the location of return journey was also found. Mobile phone of the petitioner was switched off and, therefore, his exact location could not be reflected in Call Detail Reports.

4. Challan in present case has been present in Court on 12.12.2020.

5. Earlier bail application of the petitioner, filed before filing of the challan in Court, was dismissed as withdrawn

6. Learned counsel for the petitioner has submitted that the co-petitioner namely Supriya has already been enlarged on bail and further that the petitioner was not aware about the transportation of the recovered heroin by co-accused, who were sitting on the driver and front seat, respectively. Further, it is stated that quantity recovered is intermediate quantity and that petitioner is a woman and student and she is in custody since 16.9.2020.

7. Learned Additional Advocate General submits that earlier in 2018 also, petitioner was found involved in a similar case and FIR No. 313 of 2018 dated 21.10.2018 was registered under Section 21-22 of the NDPS Act in Police Station, Solan and trial in the said case is pending in the Court. Learned counsel for the petitioner submits that in that case also petitioner has been implicated falsely and petitioner has been enlarged on bail and petitioner has not breached any condition imposed upon him at the time of granting bail in that case and further keeping in view the ignorance of the petitioner regarding transportation of contraband in the vehicle, petitioner deserves to be enlarged on bail.

8. Keeping in view the entire facts and circumstances, without commenting on merits of the case, at this stage, I am of the opinion that no fruitful purpose is going to be served by keeping the petitioner behind the bars. Accordingly, the petitioner is ordered to be enlarged on bail on his furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial Court, within two weeks from today, subject to the following conditions:

(i) That the petitioner shall make himself available during investigation, as well as the trial on each and every date as and when required, as per law;

(ii) that the petitioner 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/her from disclosing such facts to Court or to any

police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the trial;

(iv) that the petitioner shall not commit the offence similar to the offence of which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that he shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during trial.

(viii) He shall not leave India without permission of the Court.

9. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the accused-petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice.

10. In case the petitioner violates any or the conditions imposed upon him, his 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.

11. 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 18.03.2013.

12. Observations made hereinabove shall not affect the merits of the case in any manner and are strictly confined for the disposal of the present bail application.

13. Present petition stands disposed of.

The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, they may verify the order from the High Court website or otherwise.

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(Vivek Singh Thakur)
December 29, 2020(nd) Judge.