IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2199 of 2020
Decided on: 22.12.2020

Sanjeev Kumar alias Afridi ....Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
The Hon'ble Mr. Justice Anoop Chitkara, Judge.
Whether approved for reporting?[1]

For the petitioner: Mr. N.S. Chandel, Senior Advocate with Mr. Vinod Kumar Gupta, Advocate.

For the respondent/State: Mr. S.C. Sharma, Sr.Additional Advocate General and Mr. P.K. Bhatti, Additional Advocate General.

Anoop Chitkara, Judge (Oral)

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. 8 of 2020, dated 16.01.2020, under Sections 21, 22, 25 and 29 of the ND&PS Act, registered in Police Station Damtal, District Kangra, H.P.

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

3. Mr. Vinod Gupta, learned counsel for the petitioner submits that in paragraph VI(1) of the petition, although the criminal history is mentioned, yet the quantity and name of the contraband was omitted. He further states on instructions that the contraband involved in that case is diacetylmorphine (heroin), which was six grams, whereas small quantity is five grams and it is one gram above the small quantity.

4. 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 the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by sending him behind the bars for an unlimited period, so he be released on bail.

5. Police report stands filed. As per the prosecution story, on 16.01.2020, a police team was on patrol duty. At about 07:00 p.m., when the police team reached near Senior Secondary School, Mohtali, a motorcycle, having registration No. HP 38A-5213, came, qua the same police had a secret tip-off. On seeking the police, the motorcyclist, in an attempt to flee, took a slew, but the motorcycle fell and the motorcyclist and pillion rider fell. In the interregnum, a Fortuner car came on the spot. The police as the both the motorcyclist and pillion rider, as to why they were trying to flee, but they seemed baffled.

Thereafter, in presence of independent witnesses and Tehsildar, personal search of accused Surinder Kumar was conducted and a transparent packet was recovered from his pocket, which contained some brownish powder. The recovered powder was heroin and on weighment it was found to be 6.85 grams. The personal search of pillon rider, Yuvraj (petitioner herein) was also conduct and from his jacket a carry bag was recovered, which was stuffed with some whitish powder substance and capsules Parvorin Spas and Tramadol Hydrochaloried Diclofanac Sotium etc.. On weighment capsules were found to be 64.92 grams and in total 100 capsules were recovered. Whitish substance, which was heroin, on weighment was found to be 72.81 grams. Thereafter, the police completed all the codal formalities. Police prepared the spot map and recorded the statements of the witnesses. Scientific samples were separated for forensic analysis. As per the police, the petitioner is very clever person and five more cases under different Sections of Indian Penal Code are pending against him. On 13.03.2020, after completion of investigation, *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 also flee from justice, so the bail application may be dismissed.

6. Mr. Suresh Chand Sharma, learned Senior Additional Advocate General has opposed the bail application on the grounds that the petitioner is a habitual offender and he was arrested on 16.1.2020.

7. I have heard the learned counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

8. 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 the place 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 the instance of the petitioner, investigation is complete, *challan* stands presented in the learned Trial Court, the fact that the custody of the petitioner is not at all required by the police for further investigation, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence. He has further argued that the five more cases under different Sections of IPC have been registered against the petitioner. There is anger in the society against the petitioner, so in case the petitioner is enlarged on

bail, at this stage, he may flee from justice or may tamper with the prosecution evidence. He has prayed that the bail application of the petitioner be dismissed.

9. In rebuttal the learned Counsel for the petitioner has argued that nothing remains to be recovered at the instance of the petitioner, custody of the petitioner is not at all required by the police for further investigation, the petitioner cannot be kept behind the bars for an unlimited period, so the application be allowed and the petitioner be enlarged on bail.

10. At this stage, considering the quantity of contraband allegedly recovered from the petitioner, the fact that the petitioner is permanent resident of the place, thus neither in a position to flee from justice, nor in a position to tamper with the prosecution evidence, investigation is complete and *challan* stands presented in the learned Trial Court, considering the fact that the petitioner is behind the bars for the last more than nine months and cannot be kept behind the bars for an unlimited period, the petitioner is ready and willing to abide by the terms and conditions of bail, in case granted, considering the overall material, which has come on record, and without discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the petition is allowed and it is

ordered that the petitioner, who has been arrested by the police in case FIR No. 8 of 2020, dated 16.01.2020, under Sections 21, 22 and 25 of the ND&PS Act, registered in Police Station Indora, District Kangra, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of `50,000/- (rupees fifty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

(i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.

(ii) That the petitioner will not leave India without prior permission of the Court.

(iii) That the petitioner will 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 the Investigating Officer or Court.

11. In view of the above, the petition is disposed of.

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(Anoop Chitkara)
Judge

22nd December, 2020
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