IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.2217 of 2020
Decided on: 22.12.2020

Sidhant Thakur ..…petitioner

Versus

State of Himachal Pradesh …… respondent

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Coram
Ms. Jyotsna Rewal Dua*, Judge.*

Whether approved for reporting?[1]

For the petitioner :	**Mr. N.K. Thakur, Sr. Advocate with Mr. Divya Raj Singh, Advocate.**
For the respondent :	**Mr. Anil Jaswal, Additional Advocate General .**

(through video conference)

Jyotsna Rewal Dua, J *(Oral)*

For possessing commercial quantity of contraband, FIR No.81/2020, dated 23.6.2020, has been registered against the petitioner and four others under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Damtal, District Kangra H.P. The petitioner is in custody w.e.f. 23.6.2020 and is seeking regular bail under Section 439 of the Code of Criminal Procedure.

2. Bail petition Cr.M.P(M) No 1012/2020, instituted by the petitioner was dismissed with reasoning vide judgment dated 18.9.2020. Instant is petitioner's second successive bail petition.

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

3. This second successive bail petition has been filed by the petitioner on the following grounds:-

(a) Petitioner has been falsely implicated in the FIR in question.

(b) Provision of Section 37 of NDPS Act are not attracted to the facts of the case.

(c) Contraband was not recovered from the conscious possession of the petitioner.

(d) Investigation is complete.

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

Mr. Anil Jaswal, learned Additional Advocate General, while opposing the bail plea has submitted that the grounds raised in the instant bail petition have already been considered in the judgment dated 18.9.2020, rejecting the earlier bail application of the petitioner (Cr.M.P(M) No.1012/2020). No new ground has been made out in the instant petition. He also submitted that the challan stands presented before the Court of competent jurisdiction on 10.11.2020. The trial is at the initial stage. The petitioner is accused of serious offences under the NDPS Act for possessing commercial quantity of contraband affecting society at large. There is strong apprehension that after release on bail, petitioner alongwith others involved will influence the prosecution witnesses and will cause prejudice to the trial.

4(i) The grounds with respect to applicability of Section 37 of NDPS Act, alleged false implication of the petitioner & his possession of contraband have already been considered in the judgment dated 18.9.2020, rejecting petitioner's application Cr.M.P(M) No 1012/2020. The judgment was passed after hearing learned senior counsel for the parties and after perusal of the records. Bare minimum relevant extracts from the judgment are as under:-

> *"4. Learned Senior Counsel for the the petitioner Sidhant Thakur has strenuously argued that it was only Samridhi Bedi who had called Surinder Pal and had procured the Heroin and capsules in question. The petitioner Sidhant Thakur has been falsely implicated with the alleged offence as he had neither any knowledge about the contraband being in the vehicle nor he was possessing the same. He further argued that according to the status report Heroin and capsules recovered from the vehicle were obtained by Samridhi Bedi from Surinder Pal. Therefore, the petitioner cannot be implicated in the FIR. Whereas learned Assistant Advocate General vehemently opposed the bail on the ground that commercial quantity of psychotropic substance was recovered from the vehicle occupied by the petitioner and other three accused persons. Record shows that it was a case of joint possession of all four accused persons.*
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> ***5(i)** Heroin as well as Ridley capsules were recovered from the vehicle occupied by four accused persons including the petitioner. Heroin so recovered weighed 8.38 grams which falls under commonly known 'intermediate quantity' under the NDPS Act. According to the SFSL report, total weight of recovered capsules was 706.200 grams and total weight of the powder of recovered capsules was 600.600 grams. It would be apposite here to refer to the judgment passed by Hon'ble Apex Court in Criminal Appeal No. 722 of 2017, titled as **Hira Singh Vs. Union of India,** decided on 22nd April, 2020, wherein it has been held that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be excluded, rather it is to be taken into consideration alongwith actual content by weight of the offending drug while determining the 'small quantity' or 'commercial quantity' of a narcotic drug or psychotropic substance. The relevant para from the judgment is reproduced thus:-*
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> > ***"10.** In view of the above and for the reasons stated above, Reference is answered as under:-*
> > ***(i)** The decision of this Court in the case of E.Micheal Raj (supra) taking the view that in the mixture of narcotic drugs and psychotropic substance with one or more neutral*

substance(s), the quantity of the neutral substance(s) is not required to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

(II) *In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration alongwith actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;*

(III) *Section 21 of the NDPS Act is not stand-alone provision and must be construed alongwith other provisions in the statute including provisions in the NDPS act including Notification No. S.O.2942(E) dated 18.11.2009 and Notification S.O. 1055(E) dated 19.10.2001.*

(IV) *Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No.5218/2017 challenging the aforesaid notification stand dismissed."*

In the instant case total weight of powder of recovered capsule was 600.600 grams. This weight exceeds 250 grams notified as commercial quantity of Tramadol under the NDPS Act……

5(ii) *It has already been noticed that though the quantity of the Heroin recovered from the vehicle in question fell under commonly known 'intermediate quantity'. However, total weight of powder of 1102 number of Ridley capsules containing psychotropic substance Tramadol hydrochloride was 600.600 grams. The weight of powder of the capsules allegedly recovered from the vehicle exceeded 250 grams notified as commercial quantity of psychotropic substance Tramadol under the NDPS Act. Possession consists of two elements, corpus or the physical control and the second animus or intent (Refer (2015) 6 SCC 222, titled* ***Mohan Lal vs. State of Rajasthan)*** *. I have perused the record. At this juncture it cannot be said that petitioner was not in joint possession of the recovered contraband. Heroin was allegedly recovered from the middle of the front seat whereas Ridley capsules were recovered underneath the seat adjoining to the driver seat of the vehicle. Petitioner was occupying the driving seat of the vehicle. As per the record, he had brought the vehicle being used by other three accused persons as well. During investigation, all the accused persons have statedly admitted about consuming the contraband and purchasing it from Surinder Pal. As per record, though Samridhi Bedi had obtained the recovered contraband from Surinder Pal but from the perusal of record, at this stage it cannot be said that the contraband was meant to be used only by her or that the other accused persons were not in joint possession of the contraband. The petitioner,*

> *therefore, has failed to meet the requirements of Section 37 of the NDPS Act. It cannot be said at this juncture that there are no reasonable grounds to believe that petitioner is not guilty of the offence alleged against him. Therefore, there is no merit in the bail petition, which is dismissed at this stage reserving liberty to the petitioner to file fresh petition at an appropriate stage in accordance with law, if so advised."*

4(ii) In the instant bail petition, the points already considered while rejecting petitioner's previous bail petition have been reiterated. Petitioner is also incorrect in submitting that he has no criminal history. Petitioner's criminal history has been noticed in the previous judgment. The status report mentions that the police report under Section 173(2) Cr.PC stands presented before the Court of competent jurisdiction on 10.11.2020. The trial is at the stage of infancy. The petitioner is accused of possessing commercial quantity of contraband. His release at this stage would not only be in-violation of provisions of Section 37 of NDPS Act but will also prejudice the trial as his influencing the prosecution witnesses and thereby affecting the trial cannot be ruled out at this stage. The grounds and circumstances raised in the instant petition have already been considered while rejecting the earlier bail petition Cr.M.P(M) No 1012/2020 on 18.9.2020. No material substantive change in the grounds/circumstances has been pointed out in the instant petition to take a different view. Accordingly, I find no merit in the instant bail petition and the same is dismissed at this stage. Pending miscellaneous application(s), if any, shall also stand disposed of.

It is clarified that instant petition has been dismissed only for the reasons indicated above and no observation has been made with respect to the merits of matter. The observations made above shall not come in the way of petitioner's subsequent bail petition, if any, filed in accordance with law.

Jyotsna Rewal Dua
Judge

December 22, 2020
(Rohit)