IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2271 of 2020
Reserved on: December 30, 2020
Date of Decision: December 31, 2020

Ram Chand **...Petitioner.**

Versus

State of Himachal Pradesh **...Respondent.**

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1] ***Yes***.

For the petitioner	:	Mr. Gobind Korla, Advocate
For the respondent	:	Mr. S.C. Sharma & Mr. Nand Lal Thakur, Additional Advocates General.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge.

For possessing 2 kilograms of charas (Cannabis), the petitioner, who is in custody since 31st March 2019, has come up before this Court under Section 439 of the Code of Criminal Procedure, 1973 (CrPC), seeking regular bail, under Section 20 of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act).

2. The police arrested the petitioner, in FIR No.10 of 2019, dated 31.03.2019, registered under Sections 20 of the NDPS Act, in Police Station, Patlikuhal, District Kullu, Himachal Pradesh, disclosing cognizable and non-bailable offenses. Earlier, the petitioner had filed a petition under Section 439 CrPC before this Court. However, vide order dated 19th November, 2020, the same was dismissed.

3. Status report reveals that the petitioner has no criminal history relating to the offences prescribing sentence of greater than seven years of imprisonment or when on conviction, the sentence imposed was more than three years.

4. Briefly, the allegations against the petitioner are that on 31.3.2019, at around 6.00 p.m., the police party led by SHO was on patrolling in the area of Neri within

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

the jurisdiction of Police Station, Patlikulah. At around 7.20 p.m., when the police officials were present at place known as Rashadi, they noticed one Alto Car coming from Fojal side. There was nobody, other than the driver, in the Car. The police officials stopped the car and on inspection, they noticed that the rare number plate was missing. After that they inquired from the driver of the car that from where he is coming, he told the police that it is none of their business. When the Police officials inquired about the papers, then the driver of the car in local dialect said that he is in hurry. It arose suspicion in the mind of the SHO and he searched the car. On opening the bonnet, the police noticed one carry bag placed therein. Further opening, it contained charas, which on weighing was measured as 2 kilograms. After that the police completed the procedural requirement of the NDPS Act and Cr.P.C. and arrested the accused.

5. Mr. Gobind Korla, learned counsel for the petitioner submits that he has no criminal antecedents and he is in custody since 31st March, 2019. He further submits that incarceration before the proof of guilt would cause grave injustice to the petitioner and family, and contends that the allegations are false and concocted.

6. To the contrary, Mr. S.C. Sharma and Mr. Nand Lal Thakur, learned Additional Advocate General submitted that the absence of criminal antecedents are not material in commercial quantity where the burden is on the accused to come out of the rigors of Section 37 of the NDPS Act.

7. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

8. The decision of this Court in **Satinder Kumar** versus **State of H.P.**, Cr.MP(M) No. 391 of 2020, decided on 4th Aug 2020, covers the proposition of law involved in this case, wherein this Court has held that Satisfying the fetters of S. 37 of the NDPS Act is

candling the infertile eggs. The ratio of the decision is that to get the bail in commercial quantity of substance, the accused must meet the twin conditions of S. 37 of NDPS Act.

9. Wherever, the quantity of contraband falls in the category of commercial quantity , merely because, it was his first offence, is no ground for the purpose of satisfying the conditions of Section 37 of the NDPS Act. The pendency of the trial would also be important when the accused has already incarcerated around half of the sentence. For commercial quantity, the minimum sentence, that can be imposed is ten years. In the present case the accused is in Jail for around twenty one months. Therefore, the petitioner has failed to make out a case for grant of bail.

10. Any detailed discussions about the evidence may prejudice the case of the prosecution or the accused. Suffice it to say that due to the reasons mentioned above, and keeping in view the nature of allegations, no case for bail is made out in favour of the petitioner.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

12. Given the above reasoning, in my considered opinion, no case for bail is made out at this stage. Resultantly, the present petition stands dismissed.

(Anoop Chitkara),
Judge.

December 31, 2020 (ps)