IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2289 of 2020
Date of Decision: December 31, 2020

Suraj Singh **...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 with Mr. Ram Lal Thakur, Asstt. A.G.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge.

For possessing 1 kilogram and 344 grams of charas (Cannabis), the petitioner, who is in custody since 9th November 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.122 of 2019, dated 9.11.2019, registered under Sections 20 of the NDPS Act, in Police Station, Padhar, District Mandi, 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 However, vide order dated 8th July, 2020, the same was dismissed as withdrawn.

3. Para 10 of the petition states 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. Mr. S.C. Sharma, and Mr. Nand Lal Thakur, learned Additional Advocate General assisted by Mr. Ram Lal Thakur, learned Assistant Advocate General,

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

submits that they do not want to file the status report, because in the pleadings itself, the petitioner has failed to make out a case for bail.

5. Mr. Gobind Korla, learned counsel for the petitioner argues that it is his first offence. He further submits that he has no criminal antecedents and he is in custody since 9th November, 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 thirteen 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)