IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P(M) No. 56 of 2024
Reserved on: 09.01.2024
Decided on: 10th January, 2024

Ricky .....Applicant

Versus

State of H.P. ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the applicant: **Mr. Prashant Sharma, Advocate**

For the respondent: **Mr. Mohinder Zharaick, Addl. A.G.**

Virender Singh, Judge

By way of present application, under Section 439 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC'), applicant-Ricky has sought his release, on bail, during the pendency of trial, in case FIR No. 77 of 2023, dated 28.9.2023, registered with Police Station Arki, District Solan, H.P., under Sections 21 and 29 the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS Act').

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

2. According to the applicant, he is an innocent person and has falsely been implicated, in the present case.

3. It is the further case of the applicant that the investigation in the present case is complete. No recovery is effected from the petitioner, as such, no useful purpose would be served by keeping him in judicial custody.

4. On the basis of above facts, the applicant has given, certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail, during the pendency of the trial.

5. The applicant has earlier tried his luck before the learned Special Judge-II, Solan, District Solan, H.P., by filing bail application, however, the said application was dismissed by the learned Special Judge vide order dated 28.12.2023.

6. Learned counsel appearing for the applicant has submitted that even, on the ground of parity, the applicant is entitled to be released on bail, as, his co-accused namely, Ricky Pandey, Bhawani Singh @ Bhanu and Tilak Raj Gautam, have already been released on bail, by this Court, vide orders, dated 30th November, 2023, 11th December, 2023 and 12th December, 2023, passed in Cr.MP(M) No. 2933 of 2023, titled as Ricky Pandey vs. State of H.P., Cr.MP(M) No.

3052 of 2023 titled as Bhawani Singh @ Bhanu vs. State of H.P and Cr.MP(M) No. 3082 of 2023 titled as Tilak Raj Gautam vs. State of H.P, respectively.

7. When put to notice, the police has filed the status report, disclosing therein, that on 27.9.2023, HC Vivekanand alongwith other police officials was on patrolling duty and at about 9.40 p.m. when he was present near Bhumati Bazaar, then, he received a secret information with regard to the fact that two persons, while riding motorcycle bearing No.HP11A-7802, is coming from Baddi-Nalagarh side and moving towards Chhyodkhud. The said person is stated to be dealing in the business of sale and purchase of chitta/heroin and if the said motorcycle is searched, large quantity of chitta/heroin could be recovered. The said information was found to be authentic and reliable and according to the I.O. in case, efforts were made to obtain the search warrant, in the said process, the contraband could be removed from there. After the said information, he has complied with provisions of Section 42(2) of the NDPS Act and submitted the information to the SDPO, Darlaghat, Solan on phone. Two independent witnesses, namely, Shankar Lal and Gopal were associated in raiding party and picketing was done at Sarli Moar.

7.1. At about 11.15 p.m., one motorcycle bearing No. HP11A-7802 was found coming from Gamberpul side. The motorcyclist was directed to stop. Thereafter, the said person, after stopping the motorcycle, had disclosed his name as Tilak Raj Gautam and the pillion rider disclosed his name as Bhawani Singh. In the presence of the witnesses, the motorcycle was searched and from the rear seat of the vehicle, one air tight transparent plastic packet wrapped in another transparent packet was found and on opening the same, white coloured hard substance was found, which on smelling and on the basis of experience was found to be chitta/heroin. On weighment, the chitta was found to be 9.18 grams.

7.2. Thereafter, the matter was enquired from Bhawani Singh @ Bhanu and Tilak Raj Gautam. On inquiry, accused Bhawani Singh had disclosed that on 27.9.2023 in morning hours, he alongwith Tilak Raj Gautam had gone to Chandigarh near OMAX hospital, where they purchased 9.18 grams chitta/heroin, from one person known as Dada, for which, he had paid a sum of Rs.33,500/-. Accused Tilak Raj Gautam had disclosed that on 26.9.2023 during night hours, Bhawani Singh had requested him to go to Chandigarh to 5

bring chitta/heroin and as such, on 27.9.2023, he took the motorcycle of his father and had gone to Chandigarh alongwith Bhawani Singh. Both of them were arrested. They were produced before the Court at Arki on 28.9.2023 and were remanded to police custody.

7.3. During police remand, accused Tilak Raj Gautam had disclosed that they are addicted of consuming chitta and on 27.9.2023, he, second time went to Punjab along-with his co-accused Bhawani Singh, where, they had purchased 10 grams chitta for Rs.33,500/- from one Ricky @ Dada. A sum of Rs.20000/- was paid by accused Bhawani Singh through google pay and Rs.13,500/- was paid in cash. Thereafter, police has obtained bank statement from SBI Bank, Arki of Bhawani Singh with regard to transactions made through google pay.

7.4. On 30.9.2023 accused Bhawani Singh has identified the said place and the police has constituted a team to search Ricky @ dada, S/o Mamu Ram (applicant). The police had gone to the house of Ricky @ Dada (applicant), who was not found there. Thereafter, Constable Sandeep Kumar No.6386, police post Sector 24 Chandigarh was associated, who disclosed that he has a photograph of Ricky Kumar

(applicant), who has been named as accused in 6-7 cases pertaining to drugs. Photograph of Ricky Kumar (applicant) was shown to Bhawani Singh, who disclosed that this is the same person, from whom, he had purchased chitta. Thereafter, Bank statement of Ricky Pandey was obtained from Yes Bank, Sector 9, Chandigarh and it was found that accused Bhawani Singh has paid a sum of Rs.20,000/- on 20.9.2023 and Rs.13,500/- on 27.9.2023 at the direction of Ricky @ Dada to the account of Ricky Pandey. On 23.10.2023 accused Ricky @ Dada (applicant) was brought to police station from Court No.22, Section 43, Chandigarh, when, case by the name of Ricky vs. State was called in the Court. Thereafter, Ricky (applicant) was arrested in the present case, who disclosed that he has sold Chitta 2-3 times to accused Bhawani Singh and he received cash from Bhawani Singh by depositing some amount through google pay in the account of one Ricky Pandey, who is a chemist. Thereafter, Ricky Pandey was arrested in the present case, who disclosed that about 4-5 times, accused Ricky Kumar has got transferred some money in the name of Bhawani Singh through google pay in his bank account, as he does not have google pay account.

7.5. As per police, applicant used his account to facilitate the buying and selling of chitta and in connivance with accused Ricky Pandey, Ricky Kumar (applicant) has been able to sell heroin to accused Bhawani and Tilak Raj.

7.6. Accused Ricky Kumar @ Dada, son of Mamu Ram (applicant) was found involved in a number of cases at Chandigarh registered under Section 21 of the NDPS Act. Since Ricky @ Dada has destroyed the sim and mobile phone allegedly used by him for the purchase of heroin, as such, Section 201 of IPC was added.

7.7. The contraband, so recovered, was taken into possession. Other codal formalities were completed and the FIR in question was registered. The contraband so recovered was sent to SFSL, Junga from where, positive result has been received. Thereafter, the police has submitted the challan, which has been submitted before the learned trial Court i.e. Special Judge, Solan.

8. On the basis of above facts, a prayer has been made to dismiss the application.

9. Heard.

10. The contraband, allegedly recovered from the possession of the applicant, does not fall within the definition

of 'commercial quantity', as such, rigors of Section 37 of the NDPS Act are not applicable, in the present case.

11. The investigation, in the present case, is complete and this fact can be deduced from the stand of the police according to which, the report under Section 173(2) Cr.P.C. has been prepared and submitted, which is pending adjudication before the learned Special Judge-II, Solan.

12. The applicant is in judicial custody, as such, it can be said that his custodial interrogation is no longer required by the police. The chances of commencement and conclusion of trial against the applicant, in near future, are not so bright, as such, no useful purpose would be served by keeping the applicant in judicial custody, that too, for the indefinite period. Even otherwise, the pre-trial punishment is prohibited under the law.

13. So far as the registration of other cases is concerned, this fact is too short to decline the relief to the applicant, as, admittedly, no conviction has been inflicted upon the applicant by the competent Court of law. Mere registration of case does not take away the presumption of innocence, which is still available to the applicant.

14. The applicant is also entitled for grant of bail on the basis of parity, as his co-accused have already been released on bail by this Court, vide orders dated 30th November, 2023, 11th December, 2023 and 12th December, 2023, respectively. The role attributed to the applicant is almost similar to the role, allegedly attributed to the other accused, in this case.

15. Considering all these facts, especially the fact that the investigation in the present case is complete and the challan has been filed, this Court is of the view that the application of the applicant deserves to be allowed and is accordingly allowed.

16. The applicant is ordered to be released on bail in case in case FIR No. 77 of 2023, dated 28.9.2023, registered with Police Station Arki, District Solan, H.P., under Sections 21 and 29 of NDPS Act, on his furnishing personal bail bond, in the sum of ₹50,000/-, with one surety of the like amount, to the satisfaction of learned trial Court/CJM Solan/JMFC Solan. This order, however, shall be subject to the following conditions:

a) *He shall make himself available for the purpose of interrogation, if so required and regularly attend the*

trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and

d) He shall not leave the territory of India without the prior permission of the Court.

17. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

18. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

19. The Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, Solan through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

20. In case, the applicant is not released within a period of seven days from the date of grant of bail, the

Superintendent of Jail, Distrit Jail, Solan is directed to inform this fact to the Secretary, DLSA, Solan. The Superintendent of Jail, Solan is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

January 10, 2024 (Virender Singh)
(naveen) Judge

Digitally signed by RAJNI
Date: 2024.01.10 10:36:17 IST