IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 1977 of 2024
Reserved on: 20.12.2024
Date of Decision: 27.12.2024.

Harjot Singh ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] No

For the Petitioner : Mr. K.S. Gill, Advocate.

For the Respondent : Mr. Lokender Kutlehria, Additional Advocate General, with HC Balbir Singh No. 11, IO PS Sadar, District Solan, H.P.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested for the commission of offences punishable under Sections 21 and 29 of Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') registered vide FIR no. 240 of 2023, dated 18.11.2023, at Police Station Sadar, Solan, District

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

Solan, H.P. The petitioner was named by the co-accused Mohit Lakhanpal as the person who had supplied heroin to him. Mohit Lakhanpal claimed that he had transferred Rs.1,000/- and paid Rs.18,000/- to the petitioner in cash. The petitioner has been in judicial custody since 12.02.2024. The petitioner has no connection with the commission of the crime. He was arrested based on the disclosure statement made by the co-accused. The co-accused has already been enlarged on bail. The quantity of heroin stated to have been recovered from the possession of the petitioner is just above the small quantity. The challan has been filed. No fruitful purpose would be served by detaining the petitioner in judicial custody. He would abide by all the terms and conditions which the Court may impose, hence, the petition.

2. The petition is opposed by filing a status report asserting that the police party was on patrolling duty on 18.11.2023. HC-Dinesh received a secret information at 11:35 that Vijay Kumar and Rahul were staying in Room No.104 of Sona Guest House, and they were involved in the sale and purchase of heroin. The police completed the formalities and reached Room No.104 with Abhishek Thakur. Rahul and Vijay Kumar were found in the room. The police searched the room and found 7.34 grams

of heroin. The police seized the heroin and arrested Vijay Kumar and Rahul. The police interrogated them, and Vijay Kumar revealed on inquiry that he had purchased the heroin from Punjab. He paid Rs.10,000/- to Shubhankar Thakur with the help of the mobile phone of his friend Narender. Subsequently, the police arrested Mohit Lakhanpal as the person who had supplied the heroin to Vijay. Mohit Lakhanpal was interrogated, and he revealed on inquiry that he had purchased the heroin from Sahib Singh Garcha. The transaction details were obtained, and the money trail led the police to Harsaran Kaur. Her account was being used by Sahib Singh Garcha. The police arrested Sahib Singh Garcha, who revealed his name as Harjot Singh (the present petitioner). The petitioner revealed on inquiry that he and Mohit Lakhanpal had purchased 12 grams of heroin, out of which 02 grams were consumed, and some of the heroin was supplied to Vijay. The money transaction was found between Harjot Singh and Mohit Lakhanpal. The police arrested the petitioner and found that FIR No. 148/2022 dated 29.07.2022 for the commission of an offence punishable under Section 21 of NDPS Act was registered against him in Police Station City Kharar, FIR No. 37/2019 dated 12.02.2019 for the commission of

an offence punishable under Section 21 of NDPS Act was registered against him at police station Zirakpur and FIR no. 134/2022 dated 31.07.2022 for the commission of an offence punishable under Section 52A of the Prisons Act was registered at Police Station Rupnagar against the petitioner. The police filed the charge sheet. The matter is listed before learned Special Judge-I, Solan, on 02.01.2025.

3.. I have heard Mr. K.S. Gill, learned Counsel for the petitioner, and Mr Lokender Kutlehria, learned Additional Advocate General, for the respondent-State.

4. Mr K.S. Gill, learned counsel for the petitioner, submitted that there is no evidence against the petitioner except the statement made by the co-accused, which is not admissible in evidence; therefore, he prayed that the present petition be allowed, and the petitioner be released on bail. He relied upon the judgment of this Court in ***Prakash Chand versus State of H.P, 2024:HHC:9966*** in support of his submission.

5. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the police had recorded the statement of Harsaran Kaur in which she stated

that her account was being operated by the present petitioner. There is a huge money transaction between Mohit Lakhanpal and the present petitioner. Money transaction was also found between Vijay and Mohit Lakhanpal. There is no explanation for these money transactions. This material *prima facie* establishes that the petitioner had supplied heroin. The petitioner cannot be equated to a drug addict. He is a supplier of heroin, and releasing him on bail would adversely affect the young generation who is getting addicted to the heroin. Two cases have been registered against the petitioner for possession of heroin, which shows that the petitioner is likely to commit a similar offence in case of his release on bail. He prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Manik Madhukar Sarve v. Vitthal Damuji Meher, 2024 SCC OnLine SC 2271,*** wherein it was observed as under: -

> *"***19.** Courts while granting bail, are required to consider relevant factors such as the nature of the accusation, the role ascribed to the accused concerned, possibilities/chances of tampering with the evidence

and/or witnesses, antecedents, flight risk, *et al*. Speaking through Hima Kohli, J., the present *coram* in ***Ajwar v. Waseem, 2024 SCC OnLine SC 974***, apropos relevant parameters for granting bail, observed:

> "**26.** While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, *the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused, the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer:* ***Chaman Lal v. State of U.P. (2004) 7 SCC 525; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra) (2004) 7 SCC 528; Masroor v. State of Uttar Pradesh (2009) 14 SCC 286; Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496; Neeru Yadav v. State of Uttar Pradesh (2014) 16 SCC 508; Anil Kumar Yadav v. State (NCT of Delhi) (2018) 12 SCC 129; Mahipal v. Rajesh Kumar @ Polia (supra) (2020) 2 SCC 118****.
>
> *27. It is equally well settled that bail, once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the Superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a Superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order.* In ***P v. State of Madhya Pradesh (supra) (2022), 15 SCR***

211 decided by a three-judge bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must be weighed with the Court for interfering in an order granting bail to an accused under Section 439(1) of the CrPC in the following words:

> "24. As can be discerned from the above decisions, *for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial* [Dolat Ram v. State of Haryana, (1995) 1 SCC 349: 1995 SCC (Cri) 237]. To put it differently, *in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail, but if such an order is found to be illegal or perverse or premised on material that is irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."* (emphasis supplied)

20. In ***State of Haryana v. Dharamraj, 2023 SCC OnLine SC 1085***, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

> "**7.** A foray, albeit brief, into relevant precedents is warranted. *This Court considered the factors to guide the grant of bail in Ram* ***Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598*** *and* ***Kalyan Chandra Sarkar v. Rajesh Ranjan (2004) 7 SCC 528***. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496***, *the relevant principles were restated thus*:
>
> > '9. ... *It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its*

discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'

8. In ***Mahipal v. Rajesh Kumar alias Polia (2020) 2 SCC 118****, this Court opined as under:*

'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or

violations of the conditions of bail by a person to whom bail has been granted. ...'

9. In ***Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 INSC 761****,* this Court, in view of ***Dolat Ram v. State of Haryana, (1995) 1 SCC 349; Kashmira Singh v. Duman Singh, (1996) 4 SCC 693*** *and* ***X v. State of Telangana, (2018) 16 SCC 511****, held as follows:*

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of the grant of bail, cogent and overwhelming circumstances must be present, and bail, once granted, cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in ***Daulat Ram v. State of Haryana (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and XXX v. State of Telangana (2018) 16 SCC 511.'***

10. In ***XXX v. Union Territory of Andaman & Nicobar Islands, 2023 INSC 767****, this Court noted that the principles in* ***Prasanta Kumar Sarkar*** *(supra) stood reiterated in* ***Jagjeet Singh v. Ashish Mishra (2022) 9 SCC 321.***

11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in ***Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565*** and ***Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694*** is worthy of mention in this context, despite its partial overruling in ***Sushila Aggarwal (supra)***. *We are cognizant that liberty is not to be interfered with easily. More so when an order of pre-arrest bail already stands granted by the High Court.*

12. *Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits."* (emphasis supplied)

8. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

9. The status report shows that the police had found that the money was transferred to the account of Harsaran Kaur, the grandmother of the present petitioner. She made a statement before the police that the accused was operating her account. This *prima facie* shows the connection between Mohit Lakhanpal and the present petitioner. Further, the police had found a lot of money transactions between Mohit Lakhanpal and the present petitioner. The petitioner has not explained these transactions. Further, the amount was transferred to the account of the petitioner from the account of Narender's wife. Vijay, from whom the heroin was recovered, had transferred the money to Narender from the account of his wife linked to the phone pay app found in the mobile phone of Narender. These money transactions, at this stage *prima facie*, show the involvement of the petitioner in the commission of the crime.

10. The police have specifically stated in the status report that two FIRs were registered against the petitioner for the commission of an offence punishable under Section 21 of the

NDPS Act: one in police station Kharar and one in police station Zirakpur. Registration of the two FIRs for the commission of an offence punishable under Section 21 of NDPS *prima facie* support the submission of Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, that the possibility of the petitioner committing the crime while on bail cannot be ruled out. This Court exhaustively dealt with the relevance of criminal antecedents in ***Aminodin vs State of H.P. 2024:HHC: 6091*** and held after referring to various judgments that a Judge must consider the criminal antecedents of the accused, the nature of such offences and his general conduct while considering the bail petition. The bail should not be generally granted to an accused having criminal antecedents when there is a likelihood of the commission of the crime. In the present case, the registration of the FIRs against the petitioner shows that he is likely to commit a crime in case of his release on bail, and the petitioner cannot be released on bail on this consideration as well.

11. It was submitted that the petitioner has been in custody since 12.02.2024, and there is a delay in the progress of the trial. This submission is not acceptable. The copies of the order sheets were not filed to show that the delay is attributable

to the Court or the prosecution and not to the accused. Further, the matter is listed for prosecution evidence on 02.01.2025, which shows that the trial is progressing normally. Hence, the petitioner cannot be held entitled to bail at this stage; however, this will not preclude the petitioner from approaching the Court in case the trial does not conclude expeditiously for reasons not attributable to the petitioner.

12. Consequently, the petitioner is not entitled to the concession of bail. Hence, the present petition fails, and the same is dismissed.

13. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

27th December, 2024
(*saurav pathania*)