**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**Cr. MP(M) No. 2675 of 2024**
**Reserved on : 09.12.2024**
**Decided on: 18.12.2024**

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**Hitender Singh @ Rinku**

**...Applicant**

**Versus**

**State of H.P.**

**...Respondent**

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**Coram**
**Hon'ble Mr. Justice Virender Singh, Judge**
Whether approved for reporting?

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**For the applicant :** **Mr. Mukesh Sharma and Mr. Rajeev Sharma, Advocates.**

**For the respondent :** **Mr. H.S. Rawat and Mr. Mohinder Zharaick, Additional Advocates General, with Mr. Rohit Sharma, Deputy Advocate General, assisted by ASI Satpal Singh, PS Arki, District Solan, H.P.**

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**Virender Singh, Judge**

The applicant has filed the present application, under Section 483 of the Bharatiya Nagarik

Suraksha Sanhita, 2023 (hereinafter referred to as 'the BNSS'), for releasing him, on bail, during the pendency of the trial, in case FIR No.49 of 2024, dated 19.06.2024, registered under Sections 21 and 29 of the Narcotics Drugs & Psychotropic Substances Act (hereinafter referred to as "NDPS Act"), with Police Station Arki, District Solan, H.P.

2. According to the applicant, he has falsely been implicated, in the present case, as, he is an innocent person and has nothing to do with the alleged crime.

4. Elaborating his stand, it is the case of the applicant that the alleged contraband, which has been stated to be recovered, in the present case, does not fall within the definition of 'commercial quantity'. As such, according to the applicant, rigors of Section 37 of the NDPS Act are not applicable, in the present case.

5. According to the applicant, investigation, in the present case, is complete and the Police has

submitted the challan against him. All these facts have been highlighted to show that no useful purpose would be served by keeping the applicant in judicial custody.

6. Another ground, upon which, the applicant has sought release on bail, is that his co-accused Lalit Mohan has already been released on bail by the Court of learned Special Judge-II, Solan, District Solan, H.P., on 06.08.2024, whereas, co-accused Jitender Kumar @Jitu has also been released on bail by the Court of learned Special Judge-II, Solan, District Solan, H.P., on 12.08.2024. Thus, on the ground of parity also, the applicant has sought the relief of bail.

7. The applicant has tried his luck by moving similar bail application, bearing No.172-S/22 of 2024, before the Court of learned Special Judge-II, Solan. However, his bail application was dismissed on 03.10.2024.

8. Thereafter, the applicant has filed Cr.M.P.(M) No.2324 of 2024, before this Court, which was dismissed as withdrawn on 29.10.2024.

9. On the basis of above facts, Mr. Mukesh Sharma and Mr. Rajeev Sharma, Advocates, appearing for the applicant, have given certain undertakings, for which, the applicant is ready to abide by, in case, ordered to be released on bail.

10. When, put to notice, the police filed the status report on 6.12.2024, disclosing therein that on 18.06.2024, HC Hira Singh No.46, along with other police officials, had left for picketing duty towards Pavghati. On 19.06.2024 at about 4:00 a.m., the Police team was present towards Dumehar, near link road Devra, then, one blue coloured Swift car bearing No.HP64-A-9822 reached there from Dumehar side, to which, HC Hira Singh signaled to stop. Three persons were found sitting in the car.

11. On enquiry, the driver disclosed his name as Hitender Singh @ Rinku (applicant). The person, who was sitting on the co-driver seat, disclosed his name as Jitender Kumar @Jeetu, and the person, sitting on rear seat, disclosed his name as Lalit Mohan @Vicky.

12. Thereafter, as per the status report, I.O. has directed the driver of the car to show his driving licence and requisite papers of the vehicle, upon which, driver of the car Hitender Kumar @Rinku (applicant) remained silent.

13. According to the status report, thereafter, I.O. has noticed that the applicant had muffled his mouth with a green coloured cloth. When, the same was removed, it was found to be tied. On opening, inside the said cloth, two plastic pouches, containing light yellow coloured substance, were found.

14. On enquiry from driver Hitender Kumar @Rinku (applicant), Jitender Kumar and Lalit Mohan and on the basis of experience, the same was found to

be chitta/heroin. On weighment, the said chitta/heroin was found to be of 6.14 grams. The contraband was taken into possession. The ruqua was prepared and sent to Police Station Arki, where, the FIR in question has been registered. Other codal formalities were completed and all the three accused were arrested.

15. During police custody, all the three accused had disclosed that they had stolen two tyres from red coloured Swift car, near Badlag, which were also recovered from their possession.

16. As per the status report, they had purchased heroin for a sum of Rs.21,000/- from Salim and Chuddu. On 22.06.2024, accused Hitender Singh @Rinku (applicant) has identified the residential house of Salim, Ward No.7, Rakh Ram Singh, Nalagarh, and disclosed that he has purchased 6 grams heroin, for a sum of Rs.21000/- in the intervening night of 18/19.06.2024.

17. The contraband, so recovered, was sent to SFSL, Junga, from where, the positive report has been received. Thereafter, Police has filed chargesheet against the accused, which is pending adjudication before the Court of learned Additional Sessions Judge-II, Solan.

18. As per the status report, the following 16 cases are stated to have been registered against the applicant:

1. *FIR No.85/2008, dated 31.10.2008, under Sections 147, 149, 323 and 506 IPC, registered with Police Station, Arki, District Solan, H.P.*
2. *FIR No.13/2006, dated 16.12006,under Sections 341, 323, 506, 427 IPC, registered with Police Station, Arki, District Solan, H.P.*
3. *FIR No.25/2011, dated 1.4.2011, under Sections 451, 323, 34 IPC, registered with Police Station, Arki, District Solan, H.P.*
4. *FIR No.136/2012, dated 11.9.2012, under Sections 341, 323, 34 IPC, registered with P.S. Sadar Shimla, H.P.*
5. *FIR No.47/2013, dated 11.5.2013, under Sections 379, 34 IPC, registered with Police Station, Arki, H.P.*
6. *FIR No.71/2015, dated 3.10.2015, under Sections 379, 34 IPC, registered with Police Station, Arki, H.P.*
7. *FIR No.140 of 2016, dated 3.6.2016, under Sections 13 of Gambelling Act, registered with Police Station, West Shimla, H.P.*

8. *FIR No.262/2019, dated 14.11.2019, under Sections 323, 325, 506 IPC, registered with Police Station, West Shimla, H.P.*
9. *FIR No.64/2020, dated 25.8.2020, under Sections 341, 323, 504, 506, 34 IPC, registered with P.S. Arki.*
10. *FIR No.242 of 2020, dated 5.12.2020, under Sections 21 of ND & PS Act, registered with Police Station, West Shimla, H.P.*
11. *FIR No.125 of 2021, dated 27.6.2021, under Sections 452, 323, 504, 506 IPC, registered with Police Station, West Shimla, H.P.*
12. *FIR No.227/2021, dated 6.10.2021, under Sections 341, 323, 504, 506 IPC, registered with Police Station, West Shimla, H.P.*
13. *FIR No.101/2021, dated 19.12.2021, under Sections 21 of NDPS Act.*
14. *FIR No.18/2022, dated 17.1.2022, under Sections 452, 427, 323, 504 and 506 IPC, registered with Police Station, West Shimla, H.P.*
15. *FIR No.41/2022, dated 25.2.2022, under Sections 21 of NDPS Act, registered with Police Station, Sadar Kharar, Punjab.*
16. *FIR No.198/2022, dated 13.8.2022, under Sections 323, 341, 504, 34 IPC, registered with Police Station, West Shimla, H.P.*

19. It is the further case of the police that except the present case, aforesaid 16 cases, in total, have been registered against the applicant, out of which, three cases have been registered, under the NDPS Act. These facts have been highlighted to show that despite being

released on bail, in the above-mentioned cases, the applicant is still involved in selling chitta/heroin.

20. According to the Police, there is a lot of resentment against the acts of the applicant, as, the said acts are endangering the young generation.

21. Lastly, it has been apprehended that in case, the applicant is released on bail, he may again indulge in the same activities.

22. On 09.12.2024, the Police has filed fresh status report, along with copy of FIR No.101 of 2021, dated 19.12.2021, registered with Police Station, Arki, under Section 21 of the NDPS Act, and the contraband, allegedly recovered in the said case, is 3.53 grams.

23. The Police has also annexed the copy of FIR No.242 of 2020, dated 05.12.2020, registered with Police Station West, Shimla, under Section 21 of the NDPS Act, in which, the contraband, allegedly shown to be recovered, is 27.64 grams.

24. The copy of FIR No.41 of 2022, dated 25.02.2022, registered with Police Station Kharar, Punjab, has also been annexed to show that this FIR has also been registered under the provisions of NDPS Act.

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

26. As per the status reports, although, there are 16 cases, but, out of which, in cases, at serial Nos.1, 3, 4, 5, 6 and 7, the applicant is stated to have been acquitted. Three other cases have been stated to be registered under the provisions of NDPS Act.

27. In cases, at serial No.10 and 13, the contraband is stated to be 3.59 grams each, and in case at serial No.15, the contraband is stated to be 50 grams, whereas, in the present case, the contraband is stated to be 6.14 grams.

28. Even, if the contraband, allegedly recovered in all the FIRs, is taken together, in that eventuality too,

the quantity of the recovered contraband is less than the commercial quantity.

29. Mere registration of the cases does not take away the presumption of innocence, which is still available to the applicant, as, his two co-accused have already been released on bail, by the learned trial Court. As such, on the ground of parity also, the applicant is entitled to be released on bail.

30. Apart from this, in the status report, three cases are stated to have been registered, under the NDPS Act, and the other cases, which are stated to have been registered against the applicant, are not of serious nature.

31. So far as the apprehensions, which have been expressed by the police, in the status report, are concerned, for those apprehensions, reasonable conditions can be imposed, upon the applicant, in case, he is ordered to be released on bail.

32. The applicant, in this case, was arrested on 19.06.2024 and he cannot be kept in judicial custody, for the indefinite period, as a matter of punishment, as pre-trial punishment is prohibited, under the law.

33. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

34. Consequently, the applicant is ordered to be released on bail in case FIR No.49 of 2024, dated 19.06.2024, registered under Sections 21 and 29 of the NDPS Act, with Police Station Arki, District Solan, H.P., on his furnishing bail bonds in the sum of Rs.2,00,000/-, with two sureties in the like amount, to the satisfaction of learned trial Court.

35. 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 the 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.*

36. Any of the observations, made herein above, 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.

37. 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 violated by the applicant.

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

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

Superintendent of Model Central Jail, Kanda is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent of Model Central Jail, Kanda 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.

**(Virender Singh)**
**Judge**

**18.12.2024**
**(**Kalpana)

Digitally signed by RAJNI
Date: 2024.12.18 17:34:28 IST