

(2016) 01 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Cr.MP(M) No. 5 of 2016

Alone Zemer s/o Sh. Edvard US National	APPELLANT
Vs	
State of H.P.	RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (2016) 1 HimLR 453 : (2016) ILRHP 429 : (2016) LatestHLJ(HP) 10

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : Neeraj Sharma & Pushpinder Jaswal, Dy. A. Gs, for the Respondent

Final Decision : Disposed off

Judgement

P.S. Rana, J. - Present bail application is filed under Section 439 Cr.PC for grant of bail relating to FIR No.235/2015 dated 10.12.2015 registered under Section 20 of NDPS Act in Police Station Manali Distt. Kullu (H.P.).

2. It is pleaded that petitioner is innocent and petitioner has been falsely implicated in the present case. It is further pleaded that investigation is completed in the present case. It is further pleaded that petitioner will not tamper with the prosecution witnesses in any manner. It is further pleaded that alleged contraband is less than commercial quantity and rigors of Section 37 of NDPS Act will not apply in the present case. It is further pleaded that petitioner is not habitual offender. Prayer for acceptance of bail application sought.

3. Per contra police report filed. There is recital in police report that on 10.12.2015 police party was on patrolling duty at about 5.00 p.m at place Jana road Zeed forest near Patahar rivulet accused came on the road with bag upon his back portion of the body. There is further recital in police report that accused was in possession of another small bag upon his right shoulder. There is further recital in police report that when accused saw the police officials then he became

perplexed and tried to run below the road. There is further recital in police report that accused also threw his bag which was in possession of his right shoulder. There is further recital in police report that accused was caught and he disclosed his name as Alon Zemer son of Edvard R/o San Francisco California (USA). There is further recital in police report that bag which was in possession of the accused was checked and in the bag 850 gms. charas was found from the exclusive and conscious possession of the accused. There is further recital in the police report that sample and bulk of the charas was sealed in separate parcels. There is further recital in the police report that accused informed that he came in India about seven months ago and there is further recital in the police report that accused is in possession of VISA for 10 years. There is further recital in the police report that accused is in the habit of consuming charas. There is further recital in the police report that accused came from Rishikesh to Kullu-Manali and accused purchased the charas at Manikaran for his personal consumption. There is further recital in the police report that accused has not disclosed the name of other persons from whom the accused has purchased the contraband. There is further recital in the police report that accused has purchased the contraband in consideration of amount of Rs. 40000/-. There is further recital in the police report that if the accused is released on bail then accused will leave India and he will not attend the Court proceedings. There is further recital in the police report that till date Chemical Analyst report not received.

4. Court heard learned Advocate appearing on behalf of petitioner and learned Deputy Advocate General appearing on behalf of non-petitioner and also perused the entire record carefully.

5. Following points arise for determination in present bail application.

(1) Whether bail application filed by the petitioner is liable to be accepted as mentioned in memorandum of grounds of application?

(2) Final Order.

Findings upon point No.1 with reasons.

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and he did not commit any offence as alleged by the prosecution cannot be decided at this stage. Same fact will be decided by the learned trial Court after giving due opportunity of hearing to both parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of petitioner that investigation is completed and trial will be concluded in due course of time and any condition imposed upon the petitioner will be binding upon the petitioner and on this for the reasons hereinafter mentioned ground bail application be allowed is accepted It is well settled law that at the time of granting bail following factors are to be considered (i) Nature and seriousness of offence (ii) Character of the evidence (iii) Circumstances which are peculiar to the accused (iv) A reasonable

possibility of the presence of accused not being secured at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) Larger interests of the public or the State. See AIR 1978 SC 179 titled Gurcharan Singh and others v. State (Delhi Administration). Also see AIR 1962 SC 253 titled The State v. Captain Jagjit Singh. It was held in case reported in 2012 Cri. Law Journal 702 SC titled Sanjay Chandra v. Central Bureau of Investigation that object of bail is to secure the appearance of the accused person at trial. It was held that grant of bail is rule and committal to jail is an exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for an indefinite period.

8. In view of the fact that alleged contraband was recovered from the petitioner is not commercial quantity and in view of the fact that the investigation is completed and in view of the fact that case will be disposed of by the learned trial Court in due course of time Court is of the opinion that it is not expedient in the ends of justice to keep the petitioner in judicial custody. Court is also of the opinion that if the petitioner is released on bail then interest of the State and general public will not be adversely affected.

9. Submission of learned Deputy Advocate General that if the bail application filed by the petitioner is allowed then petitioner will leave India and trial will be hampered and on this ground bail application be denied is rejected being devoid of merits for the reason hereinafter mentioned. It is held that conditional bail will be granted to the petitioner and conditions will be imposed upon the petitioner that petitioner will not leave India without prior permission of the Court and condition will also be imposed upon the petitioner that petitioner will surrender his VISA before the learned trial Court till conclusion of the trial. It is held that if petitioner will flout terms and conditions of bail then prosecution will be at liberty to file application for cancellation of bail as provided under Section 439(2) of the Code of Criminal Procedure 1973 in accordance with law. In view of the above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order).

10. In view of my findings on point No.1 above bail application filed by petitioner under Section 439 of Code of Criminal Procedure 1973 is allowed. It is ordered that petitioner will be released on bail on furnishing personal bond in the sum of Rs. 500000/- (Five lacs) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will join investigation of the case whenever and wherever directed by the Investigating Officer in accordance with law. (ii) That petitioner will attend proceedings of the learned trial Court regularly till conclusion of the trial. (iii) That petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iv) That petitioner shall not leave

India without prior permission of the Court. (v) That petitioner will deposit his VISA in the learned trial Court till conclusion of the trial. (vi) That petitioner will not commit similar offence qua which he is accused. Observation made herein above will not effect merits of the case in any manner and will be strictly confined for disposal of the present bail application. Cr.MP(M) No.5/2016 is disposed of.