

(2022) 02 SHI CK 0020

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 319 Of 2022

Arun Gupta @ Lovely

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 37
Evidence Act, 1872 — Section 27

Citation : (2022) 02 SHI CK 0020

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Vijender Katoch, Hemant Vaid, Bharat Bhushan

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Present petition for grant of regular bail has been filed by the petitioner in relation to FIR No.291/2021, dated 30.10.2021, registered under Sections

21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') at Police Station Nurpur, District Kangra.

2. The prosecution case as it comes out from the status report is that:-

2(i). On 30.10.2021, a police party was present near a Dhaba at Jassur, when it noticed a person coming from nearby a petrol pump. On seeing the

police personnel, that person tried to flee away from the spot. One of the police personnel identified the person (as the bail petitioner) since previously

also, cases under the NDPS Act were registered against him. On suspicion, the police personnel thought it prudent to carry out search of the bail

petitioner. Search was carried out in accordance with law. During search, heroin weighing 6.01 grams was recovered from the petitioner. This led to

registration of the FIR. The petitioner was arrested on 30.10.2021.

2(ii). As per the status report, during investigations, the petitioner got recorded his statement under Section 27 of the Indian Evidence Act to the effect

that he had procured the contraband from one Ramesh Kumar @ Tillu. The investigating agency obtained call detail record of the mobile phone

numbers used by the petitioner and said Sh. Ramesh Kumar and confirmed that calls were exchanged between the two on 30.10.2021 many times.

Further that the location of both the individuals was at Jassur on that day. Said Sh. Ramesh was also arrested on 01.12.2021 and investigation was

carried out from him. He corroborated the statement of the bail petitioner and also stated that on the asking of the petitioner, he had obtained the

contraband from an unknown person in Pathankot. After consuming some quantity of the contraband himself, he handed over the remaining quantity

to the bail petitioner.

2(iii). As per the status report, various cases under the NDPS Act were registered against said Sh. Ramesh Kumar, who has since been enlarged on

bail by the learned Additional Sessions Judge-I, Dharamshala.

3. Learned counsel for the petitioner submitted that the contraband allegedly recovered from the petitioner is marginally higher than the small quantity.

Rigors of Section 37 of the NDPS Act are not attracted. Investigation in the matter is complete, therefore, the petitioner deserves to be enlarged on

bail at this stage. Learned counsel further submitted that in case of his enlargement on bail, the petitioner will not influence the prosecution witnesses

or tamper the prosecution evidence and will abide by all the terms and conditions, which may be imposed upon him by this Court. Resisting the bail

petition, learned Additional Advocate General submitted that the bail petitioner is a habitual offender. Previously also, FIR No.292 of 2018, dated

01.10.2018, involving 5.82 grams of heroin, was registered against him under Section 21 of the NDPS Act in Police Station Nurpur. Another FIR

No.26 of 2020, dated 01.09.2020, involving 6.38 grams of heroin, was also registered against him under Section 21 of the NDPS Act in Police Station

Nurpur. In the facts and circumstances of the case, he does not deserve to be enlarged on bail at this stage.

4. I have heard learned counsel for the parties and gone through the case file.

The quantity of the contraband allegedly recovered from the possession of the

bail petitioner weighs 6. 01 grams. This though falls in the intermediate category, but is nearer to the small quantity notified under the NDPS Act. In any case, rigors of Section 37 of the NDPS Act are not attracted. The petitioner is in custody ever since 30. 10.2021 and has completed more than three months in confinement. Investigation in the matter is complete. A perusal of the status report suggests that the petitioner has co-operated with the investigating agency. Challan has also been presented before the Court of competent jurisdiction on 21.12.2021. No doubt, two criminal cases, bearing FIR Nos.292 of 2018 and 26 of 2020, under the NDPS Act have been registered against the petitioner, however, the quantity of contraband involved therein is nearer to small quantity notified under the NDPS Act. It is not the case of the respondents that they have moved any application for cancellation of bail granted to the petitioner in the aforesaid two cases. As noticed earlier, petitioner is behind the bars for more than three months. He is aged 34 years and is resident of Village and Post Office Naganbhari, Tehsil Nurpur, District Kangra, Himachal Pradesh, therefore, his presence can be ensured in the trial. By instant bail, one last chance is being afforded to the petitioner to reform himself on the stringent condition that in case in future, the petitioner is found to be involved in any offence under the NDPS Act, then, irrespective of the quantity involved, the bail granted to him shall be liable to be cancelled at the instance of the investigating agency. Accordingly, the present petition is allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one local surety in the like amount to the satisfaction of the learned Trial Court having jurisdiction over the Police Station concerned, subject to the following conditions:-

- (i). The petitioner shall join and cooperate the investigation of the case as and when called for by the Investigating Officer in accordance with law.
- (ii). The petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever.
- (iii). The petitioner will not leave India without prior permission of the Court.
- (iv). The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court

or any Police Officer.

(v). In case the petitioner is put to trial, then he shall attend the trial on every hearing, unless exempted in accordance with law.

(vi). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in

the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail,

PAN Card, Bank Account Number, if any.

(vii). It is made clear that in case the petitioner is arraigned as an accused in future in any FIR under the NDPS Act, then this bail is liable to be

cancelled. It is open for the Investigating Agency to move appropriate application in that regard. This shall also be considered as a negative factor for

consideration of his future bail application, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of

the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an

opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made

hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous application(s), if any.

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