
(2020) 12 SHI CK 0042

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.2129, 2130 Of 2020

Bhag Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 22, 25, 29

Citation : (2020) 12 SHI CK 0042

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Manoj Pathak, Gaurav Sharma

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The matters are taken up through video conference.
2. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release, in case FIR No. 12 of 2019, dated 02.03.2019, under Sections 22, 25 and 29 of the ND&PS Act, registered in Police Station Nerwa, District Shimla, H.P.
3. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

4. Police reports stand filed. As per the prosecution story, on 02.03.2019 at police team was presented as place Shikyar and at about 02:45 p.m. they stopped a vehicle, having registration No. HP08A-2472, for checking. There were two occupants in the vehicle, including the driver, and upon being asked, the driver disclosed his name as Naresh and other occupant divulged his name as Bhag Singh (petitioners herein). The police asked for the documents of the vehicle and while the documents being checked, police found a bag on the rear seat of the vehicle. The petitioners, on being inquired by the police about the aforesaid bag, could not give any satisfactory reply. The police checked the bag and found it to be stuffed with 100 vials of Chlorpheniramine Maleate Codeine Phosphate Syrup Ceerex Cough Syrup each 100 ml. The petitioners could not produce any valid document/license for transporting and keeping the aforesaid vials of narcotics. Thereafter, the police completed all the codal formalities. Police registered a case against the petitioner and the investigation ensued. Police prepared the spot map and recorded the statements of the witnesses. Both the petitioners were arrested and during the course of investigation, they divulged that they purchased the aforesaid contraband from a Nepali person, but the said Nepali person, despite intensive search, could not be traced. The chemical analysis report reveals that the contraband recovered from the petitioners is Codeine Phosphate. As per the police, after completion of investigation, challan stands presented in the learned Trial Court. Both the petitioners were found involved in sale/purchase of narcotics and they were found actively involved in spreading the menace of drugs in the society. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were found involved in a serious offence. The petitioners, at this stage, in case enlarged on bail, may tamper with the prosecution evidence, may flee from justice and may again indulge in the business of narcotics, so the bail applications may be dismissed.

5. I have heard the learned Counsel for the petitioners, learned Deputy Advocate General for the State and gone through the record, including the police reports, carefully.

6. The learned Counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case. He has further argued that the petitioners are permanent residents of the place and neither in a position to

tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, especially when nothing remains to be recovered at their instance, investigation is complete, challan stands presented in the learned Trial Court, their custody is not at all required by the police, so the bail applications may be allowed and the petitioners be enlarged on bail. Conversely, the learned Deputy Advocate General has argued that the petitioners have committed a serious offence. He has further argued that in case the petitioners are enlarged on bail, they may flee from justice, may tamper with the prosecution evidence and may again indulge in such activities. He has argued that the trial is yet to begin, so the bail applications of the petitioners be dismissed.

7. In rebuttal the learned Counsel for the petitioners has argued that the petitioners are permanent residents of the place, thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, nothing is to be recovered at their instance, custody of the petitioners is not at all required by the police, as the investigation is complete and challan stands presented in the learned Trial Court, so the applications be allowed and the petitioners be enlarged on bail. In order to render lateral support to his arguments, the learned counsel for the petitioners has relied upon the following judicial pronouncements:

1. Amit Singh Moni vs. State of Himachal Pradesh, Criminal Appeal No. 668 of 2020, decided by Honâ??ble Supreme Court on 12.10.2020; &
2. Sumit Jindal vs. State of Himachal Pradesh, Cr.MP(M) No. 1772 of 2020, decided by a Co-ordinate Bench of this Court on 12.11.2020.

8. At the very out set it would be profitable to examine the aforesaid judgments relied upon by the learned counsel for the petitioners. Both the above judgments are not applicable to the facts of the present case, as in bail petitions there can never be a straight-jacketed formula or fixed pre-drawn line of law for granting or refusing bail. Each and every petition, seeking bail, has to be seen with the magnifying lenses of facts and circumstances of that particular case. The vital aspects in granting or refusing bail can be the possibility of accusedâ??s fleeing, in case the bail is granted, the possibility of the accusedâ??s tampering with the prosecution evidence, the gravity and seriousness of the offence, the manner in which the same is alleged to

have been committed etc. etc. and there may be innumerable other aspects/ reasons for granting or refusing bail. Thus, no straight-lined formula can

be adhered to in granting or refusing bail and each case has to be tested with the valuable aid of its own facts and circumstances, vis-À-vis, some

other important aspects and law.

9. The argument of the learned counsel for the petitioner that the trial has been halted due to Covid-19 pandemic and the petitioners are being kept

behind the bars for no reason can also not be accepted, as the learned Trial Court is taking up the urgent cases, including the cases wherein

prosecution witnesses are to be examined on certain occasions.

10. At this stage, considering the quantity of the recovered contraband, the manner in which the same is alleged to have been recovered from the

exclusive and conscious possession of the petitioners, the fact that in case the petitioners are, at this stage enlarged on bail, may flee from justice,

tamper with the prosecution evidence and may again indulge in such type of activities, also considering the fact that the petitioners were found actively

involved in sale/purchase of the narcotics and they were also found deeply indulged in spreading the menace of drugs in the society, considering all the

facets of the case and without discussing the same at length, at this stage, this Court finds that the present is not a fit case where the judicial discretion

to admit the petitioners on bail is required to be exercised in their favour.

11. In view of what has been discussed hereinabove, the petitions are devoid of merits, deserve dismissal and are accordingly dismissed.

12. Needless to say that the observations made hereinabove are confined for the adjudication of the present petitions only and shall have no bearing,

whatsoever, on the merits of the main case, which shall be adjudged and decided on its own merits.