

(2022) 09 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2012, 2013 Of 2022

Chaman Lal And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 18, 29, 37

Citation : (2022) 09 SHI CK 0064

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Pavinder Thakur, Arvind Sharma, Gaurav Sharma

Final Decision : Disposed Of

Judgement

Satyen VAIDYA, J

1. Both these petitions are being decided by a common order as common questions of facts are involved and both arise out of the same FIR.
2. Petitioners in both the petitions are accused in case FIR No. 58 of 2022, dated 29.08.2022, registered at Police Station Darlaghat, District Solan, H.P. under Sections 18 and 29 of the Narcotic Drugs and Psychotropic Substances (for short 'NDPS') Act.
3. The case of police is that on 29.08.2022 at about 7.30 P.M. during patrol duty a vehicle No. HP-52A-8150 (Wagon-R) was noticed approaching from Bilaspur side. The vehicle was abruptly stopped and was tried to be reversed in haste, but it was apprehended by the police officials after entertaining a suspicion. Dharam Chand petitioner in Cr.MP(M) No. 2013 of 2022 was on driver's seat and Chaman Lal petitioner in Cr.MP(M) No. 2012 of 2022 was occupying the rear seat of the vehicle. Another person named Khub Ram was occupying the front passenger seat. Khub Ram was holding a backpack in his lap. On checking of the backpack, opium weighing 161 grams and currency notes worth Rs.1,44,100/- were recovered. The case was registered and all the occupants of the vehicle including

petitioners were arrested. Petitioners presently are in judicial custody in above noted case.

4. In the status report filed on behalf of the respondent, it has been submitted that the investigation of the case is still not complete. As per the case of police, Khub Ram had brought the contraband for sale to petitioner Dharam Chand and petitioner Chaman Lal was also aware about the transaction. Accused Khub Ram had disclosed the source of currency notes as sale price of the apple crop. The bail applications are opposed on the ground that there is a lot of resentment in the residents of the area. The release of petitioners on bail may adversely affect the interest of young generation. It is also apprehended that in case of release of petitioners on bail, they may again indulge in similar activities.

5. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State and have gone through the records.

6. The opium recovered in the case is 161 grams, which is intermediate quantity. Commercial quantity of opium is 2.5 kg. Rigors of Section 37 of the NDPS Act will not be applicable in the case.

7. Though this Court will not minutely scan the material collected during investigation, still the same can be looked into for assessing the gravity and seriousness of allegations against the petitioners. Admittedly, the contraband was recovered from the backpack held by accused Khub Ram. The complicity of petitioners and then involvement in commission of alleged offence will be proved during trial.

8. Nothing has been alleged against petitioners that they have any criminal antecedents or have been involved in any other case under the NDPS Act. The trial of the case is likely to take considerable time before conclusion. Pre-trial incarceration is not the rule, therefore, in the given facts and circumstances of the case, the prolonged incarceration of petitioners before conviction will not be justified. No fruitful purpose shall be served by keeping the petitioners in custody.

9. The concern of the Court at this stage is to secure the fair and expeditious conclusion of trial for which appropriate conditions can be imposed against petitioners. The apprehension of the respondent regarding re-indulgence of petitioners in similar activities after grant of bail can also be taken care of by binding the petitioners with appropriate terms. Petitioners are permanent resident of Village Nauni, Post Office Darlaghat, Tehsil Arki, District Solan, H.P. and there is no likelihood of their fleeing or absconding from the course of justice.

10. In the peculiar facts and circumstances of the case, both the petitions are allowed and the petitioners are ordered to be released on bail, in case FIR No. 58 of 2022, dated 29.08.2022, registered at Police Station Darlaghat, District Solan, H.P. under Sections 18 and 29 of the NDPS Act, on their furnishing personal bonds in the sum of Rs. 50,000/- each with one surety each in the like amount to the satisfaction of Judicial Magistrate 1st Class, Arki, District Solan, H.P. This

order is, however, subject to following conditions: -

- (i) That the petitioners shall regularly attend the proceedings of the trial.
 - ii) That the petitioners 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 from disclosing such facts to the Court or to the police.
 - iii) That the petitioners shall not in any manner tamper with the prosecution evidence.
 - iv) That any indulgence of petitioners in similar activities during the continuance of this order shall entail cancellation of the bail granted to the petitioners.
 - v) That the petitioners shall not leave India without permission of this court till continuance of investigation and thereafter of the learned trial Court, if any.
11. Any observation made hereinabove shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

Petitions stand disposed of.