
(2022) 12 SHI CK 0123

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1162, 1707 Of 2022

Deepak Rai And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 28-12-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 21(c), 27(a),
28, 29, 37, 42(2), 218

Citation : (2022) 12 SHI CK 0123

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : N.S. Chandel, Vinod Gupta, Hemant Vaid

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioners, invoking provisions of Section 439 Code of Criminal Procedure (in short 'Cr.P.C.') have approached this Court to enlarge them on bail in case FIR No. 230 of 2020, dated 23.07.2020, registered in Police Station Nalagarh, District Solan, H.P., under Sections 218 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Status report stands filed. record was also made available.

3. Petitioners have also referred certain documents related to application submitted by Deepak Rai, filed on 4. 08.2020 under Section 91 of Cr.P.C. for summoning/producing CCTV footage of cameras of certain areas of Nalagarh and mobile phone locations of numbers of police team, who, as per prosecution case, apprehended the petitioners alongwith contraband. Reference has also been made to the complaints/ applications made by wife of Gurnam Singh alias Gogi (petitioner in Cr.M.P.(M) No.1707 of 2022) to Chairperson Himachal Pradesh Human Rights Commission at Shimla and Director General of Police, Himachal

Pradesh in November 2020.

2. Record reveals that application filed under Section 91 of Cr.P.C., by Deepak Rai was allowed by Special Judge, Solan, vide order dated 05.08.2020, passed in Crl. Misc. Application No.120-NL/4 of 2020, titled as Deepak Rai vs. State of H.P. & another, directing the Superintendent of Police, Police District Baddi, H.P., to preserve CCTV footage of CCTV cameras installed at places mentioned in the application through concerned service providers and to furnish Call Detail Records (CDRs) location of mobile numbers details given in the application through concerned service provider.

3. Respondent-State had assailed aforesaid order dated 5. 08.2020 by filing Cr. Revision No.362 of 2020, titled as State of H.P. vs. Deepak Raj, which stands dismissed on 27.12.2022.

4. As per prosecution case, on the basis of Rukka sent by ASI Gopal Singh, Incharge Special Investigating Unit (SIU) Baddi, FIR No.230 of 2020 was registered on 23.07.2020 in Police Station Nalagarh, stating therein that on 22.07.2020 ASI Gopal Singh alongwith police officials was present at Nangal Bus Stand in Nalagarh. At 8.20 p.m. he received a reliable information through a faithful informer that Gurnam Singh alias Gogi is involved in business of selling and purchasing opium alongwith Deepak Rai and at that time, both of them were present, in their car bearing registration No.HP-12M-7070 at lower Nangal near Siddhivinayak Company on the side of road, with intention to sell opium and on the spot huge quantity of opium could be recovered from them. Information was concrete and reliable and there was possibility of disappearance of evidence or accused persons. Therefore, information was reduced into writing under Section 42(2) and was sent to the office of Sub Divisional Police Officer (SDPO) Nalagarh and police party headed by ASI Gopal Singh rushed to the spot. One Ram Pal, who met police party on the way was also associated with the raiding party after telling him about information received from the informer. On reaching at the spot, aforesaid car HP-12M-7070 was found parked on the right side of the road with two persons sitting on the front seats. Both occupants of car were overpowered by ASI Gopal Singh with the help of accompanying police officials and their names and addresses were inquired. Person sitting on the driver seat disclosed his name Deepak Rai. Whereas, another person disclosed his name Gurnam Singh alias Gogi and they disclosed their parentage, age and addresses. Both of them were informed about information received by the police and their written consent for search was obtained and SDPO was requested telephonically to come on the spot, who came on the spot at about 9.40 p.m. Thereafter, following prescribed procedure car was searched and personal search of both of them was also conducted. During search a plastic bag containing 3.048 kilograms opium was found kept near gear liver of the car. Contraband was identified as opium by smelling and on the basis of experience. Accused persons also disclosed it as opium. Contraband was taken into possession and seized by following procedure.

5. After registration of FIR, petitioners were arrested at 2.30 a.m. on 23.07.2020 and investigation was carried on and since then, after remaining in police custody, they are in judicial custody.

6. It is further case of the prosecution that during interrogation aforesaid two accused persons disclosed that they had purchased recovered contraband from local residents of Nalagarh namely Shishya Pal alias Munna resident of Dattowal and Shyam Singh resident of Rajpura. In CDRs there was evidence of talks of accused persons with these two persons and, therefore, they were summoned and interrogated.

7. As per police case, during interrogation, it surfaced that Shyam Singh had given his Truck to Deepak Rai for plying it on contract, but Deepak Rai did not pay the installment of loan and parked the Truck with some Transporter at Gauhati and, on this count, there was dispute between Shyam Singh and Deepak Rai. Shishya Pal disclosed that he had lended money amounting to ` 1,50,000/- to Gurnam Singh alias Gogi long ago and Gurnam Singh paid back ` 1,50,000/-, but was not paying balance amount of ` 25,000/-. Shyam Singh and Shishya Pal alias Munna stick to their stand that their talks with Gurnam Singh and Deepak Rai were in connection with aforesaid disputes and reasons, but not for supply or receiving of contraband recovered by the police from two accused.

8. As per police case involvement of Shishya Pal and Shyam Singh was not found in the case.

9. Challan was prepared on 08.09.2020 and was presented in the Court of Special Judge on 09.11.2020.

10. In its application filed under Section 91 of Cr.P.C. as well as complaint submitted to Chairperson H.P. Human Rights Commission at Shimla and Director General of Police, H.P., it is stand on behalf of accused persons that they have been implicated falsely by showing recovery of contraband which was never recovered from them or their car, but was planted by SIU Team and to substantiate his plea they have referred CCTV footage of private parties of certain road of different areas of Nalagarh alongwith timing thereon indicating that on 22.07.2020 petitioners were roaming in the Town in vehicle together with police officials, police vehicles and vehicle of petitioners which can be seen moving together on the same road, and in some CCTV footages/photographs vehicle of petitioners are being driven by police. Whereas, sometimes 'petitioners' have been found sitting in the vehicle of police. The police officials were none else but the members of team of SIU Baddi Nalagarh, who claimed to have apprehended petitioners alongwith 3.048 kilograms opium at lower Nangal. To substantiate the aforesaid plea petitioners had filed application through Deepak Rai (petitioner) in the Trial Court for providing/summoning CTV footages of various spots of Nalagarh area and CDR location of mobile number of SIU Team which has been allowed and Revision Petition preferred by the State has also been dismissed on 27.12.2022.

11. In sequel to complaints submitted by Kamlesh wife of Gurnam Singh to Chairpersons of H.P. Human Rights Commission and Director General of Police, H.P. a fact finding report was prepared and submitted by Superintendent of Police, Police District Baddi, wherein, it was concluded that there was no violation of Protection of Human Rights, Act, 1993. Fact finding report was based on inquiry conducted by Deputy Superintendent of Police (Leave Reserve) Baddi, Police District Baddi, H.P.

12. In its report Deputy Superintendent of Police, referring statement of ASI Gopal Singh, has submitted that SIU Team Baddi, on the basis of information from informer had tried to purchase opium from Deepak Rai by becoming dummy customers, but Deepak Rai and Gurnam Singh kept on wandering here and there alongwith dummy customers of SIU Team and informer in the places like Chowkiwala, Chuhuwal, Nalagarh and Ghansot etc. on the pretext of providing opium, but near Dattowal they refused to supply opium, probably smelling that members of SIU Team were dummy customers and, thereafter, police party came to the area of Nangal where, at 8.20 p.m. they received information, referred supra, and in furtherance thereto, both petitioners were apprehended as narrated in the status report recorded hereinabove.

13. Learned Additional Advocate General has also placed reliance upon Daily Diary Report No.3 dated 22.07.2020 of SIU Baddi, recorded regarding his departure alongwith police party in the area of Police Station Nalagarh and also Rapat No.4 dated 23. 07.2020 of SIU Baddi, recorded regarding arrival of police party at 7.00 a.m., wherein it has also been recorded that during patrolling ASI Gopal Singh received information from informer about involvement of Gurnam Singh and Deepak Rai in illegal business of selling opium, whereupon, ASI Gopal Singh alongwith informer and SIU Team members had approached both of them by purporting them customers and both of them had agreed to supply opium at Sattewal. Whereupon, ASI Gopal Singh had arranged two vehicles HP-03C-2077 and HP-12N-6915 and reached at Sattewal and both accused persons came there in vehicle HP-12M-7070 and, thereafter, both of them took dummy customers i.e. SIU Team members and informer to Chowkiwala, Nalagarh, Ghansot, Chuhuwal etc. for supplying opium, but lastly they refused to supply opium. Further that, thereafter, ASI Gopal Singh alongwith officials was present near Nangal Bus Stand and after receiving information as recorded in FIR No.230 of 2020 had completed the proceedings and all these facts were informed to the higher officers through telephonic information.

14. Respondent-State has also relied upon general details of General Diary recorded on various dates with respect to working and checking of CCTV cameras installed at various places in Nalagarh area and it has been claimed that most of these CCTV cameras were not working on 22. 07.2022/23.07.2020.

15. Learned counsel for the petitioner has submitted that in Rapat No.3 dated 22.07.2020 of SIU Baddi, only departure of the police party has been mentioned. Further that, Rapat No.4 of 23. 07.2020 of Daily Diary Report has been recorded

regarding arrival of the police party in Police Station and change of date, but in the said Daily Diary Report, a story of receiving information, approaching both petitioners by SIU and informer as dummy customers and roaming of SIU Team and informer alongwith petitioners in three vehicles has been introduced, but no such information regarding dummy customer story has been mentioned in the Rukka sent for registration of FIR. He has further submitted that these reports are concocted and fabricated as no such register has been produced or available or kept by SIU which is independent of Register being maintained in the Police Station. Further that, now every proceeding of the Police Station and recording of Daily Diary Report is done in Computers. Whereas, these Report Nos.3 and 4 have been recorded by hand and there is no reason explained for recording these two reports on plain papers or Register instead of recording the same in Computers. Whereas, other Daily Diary Reports, except Daily Diary Reports related to out of order CCTV cameras and roaming with accused persons in Nalagarh area, placed on record, have been recorded in Computers. It has been submitted by learned counsel for the petitioners that these reports have been fabricated after filing of application by Deepak Rai on 04.08.2020 as well as after filing complaint by wife of Gurnam Singh with Chairperson of H.P. Human Rights Commission and Director General of Police, H.P. as neither in challan nor anywhere else, prior to filing of application by Deepak Rai and wife of Gurnam Singh, there is any reference of dummy customer story is there as concocted in Rapat No.4 referred supra.

16. Learned counsel for the petitioner has submitted that veracity of prosecution case is demolished by the fact that in Rukka, FIR as well as in challan, it has been stated by ASI Gopal Singh that on reaching on the spot, on the basis of information received at 8.20 p.m., two person(s) were found sitting in the car on front seat and their names and addresses were inquired. He has submitted that if both petitioners were alongwith SIU Team since morning as claimed in Rapat No.4 and in statement of ASI Gopal Singh recorded in December 2020 during inquiry by Deputy Superintendent of Police, then there was no occasion for ASI Gopal Singh to record that two persons were found sitting in the car and their names were inquired as not only SIU was well acquainted with identity of petitioners, but petitioners were also familiar to the SIU as all of them were roaming together in Nalagarh area since morning. It has further been submitted that apart from roaming together on 22.07.2020 for whole day, some members of SIU were local persons and petitioners were also residents of local area and having relative in common villages, they were known to each other. Therefore, he has submitted that story of roaming in the Town since morning by posing them customers has been concocted to cover loophole, but it has further falsified the claim of prosecution regarding the manner in which recovery of opium has been claimed in the FIR.

17. Learned Additional Advocate General has submitted that there is no enmity between SIU Team and the petitioners, so as to cause SIU team to implicate the petitioners falsely that too with huge commercial quantity of opium and further

that, issues raised by the petitioners herein shall be assessed and evaluated by the Trial Court on conclusion of trial at the time of passing final judgment, and for quantum of opium recovered and nature of the offence which is damaging entire Nation, prayer for enlarging the petitioners on bail has been opposed.

18. Learned counsel for the petitioners has submitted that quantity of alleged recovered contraband in present case is about 3 kilograms. Whereas, commercial quantity of opium starts from 2.5 kilograms and, therefore, quantity claimed to have been recovered is leaning towards minimum commercial quantity of opium of 2.5 kilograms. Whereas, petitioners are behind the bars since last about more than 2 years 5 months and trial is going on slow pace. Whereas, case is still at the stage of recording evidence and till date only 4 witnesses out of total 22 witnesses have been examined and last witness was examined on 25.08.2021 and next date in the trial is fixed for 28.01.2023 and there is no likelihood of completion of trial in near future and, therefore, also petitioners are entitled to be enlarged on bail.

19. Learned counsel for the petitioners, to substantiate plea for bail, on this count, has referred pronouncement of the order dated 1.8.2022 passed by the Supreme Court in a petition for Special Leave to Appeal (Crl.) No. 3961 of 2022, titled as Abdul Majeed Lone Vs. Union of Territory of Jammu and Kashmir, wherein petitioner facing trial for having been found in possession of 1100 grams commercial quantity of charas was enlarged on bail for suffering incarceration for over 2 years and 5, months observing that there was no likelihood of completion of trial in near future; and order dated 12.10.2020, passed by Three Judges' Bench of the Supreme Court, in Criminal Appeal No.668 of 2020, titled as Amit Singh Moni vs. State of Himachal Pradesh, whereby petitioner therein, facing trial for recovery of 3.285 kilograms charas from a vehicle, alongwith four other persons, was enlarged on bail for having been in detention of 2 years and 7 months, as till then out of 14 witnesses, 7 witnesses were yet to be examined and last witness was examined in February 2020 and, thereafter, there was no further progress in the trial.

20. Learned counsel for the petitioners has referred pronouncements the Supreme Court in Nitish Adhikary @ Bapan v. The state of West Bengal, Special Leave to Appeal (Crl.) No.5769 of 2022, decided on 1.8.2022, whereby the accused under Sections 21(c) and 37 of NDPS Act was ordered to be enlarged on bail after detention of 1 year and 7 months, observing that the trial was at a preliminary stage.

21. Learned counsel for the petitioners has placed reliance on order dated 7.2.2020 passed by the Supreme Court in Criminal Appeal No. 245 of 2020, titled as Chitta Biswas Alias Subhas Vs. The State of West Bengal, whereby accused having found in possession of Codeine mixture above commercial quantity, was enlarged on bail after 1 year 7 months, at the stage of trial when out of 10 witnesses, 4 witnesses have been examined in the trial.

22. Reliance has also been placed on order dated 10. 11.2021, passed by the Supreme Court in Special Leave to Appeal (Criminal) No. 5187 of 2021, titled as Kulwant Singh v. The State of Punjab, whereby accused after detention of more than 2 years, was enlarged on bail despite the fact that recovered contraband was of commercial quantity, for prayer to grant of bail was on the ground of advanced age of petitioner, period of custody undergone by him and the fact that trial would take time to conclude.

23. Learned counsel for the petitioners has also placed reliance upon order dated 7.12.2021, passed by the Supreme Court in Criminal Appeal No. 1570 of 2021, titled as Mahmod Kurdeya Vs. Narcotics Control Bureau, whereby petitioner apprehended with thousands of tablets of Tramadol X-225, was enlarged on bail. In this case, quantity of drug recovered was more than 50 Kilograms. However, in this case bail was granted by taking into consideration the fact that charge-sheet was filed on 23.9.2018 and thereafter even charges had not been framed nor trial had commenced till grant of bail to the petitioner, whereas manufacturer who sold the drug to the accused had been granted bail.

24. Learned counsel for the petitioners has also placed reliance on order dated 22.8.2022 passed by the Supreme Court in Special Leave to Appeal (Crl.) No. 5530 of 2022 titled as Mohammad Salman Hanif Shaikh Vs. The State of Gujarat, whereby Supreme Court has enlarged the petitioner therein on bail only on the ground that he had spend about two years in custody and conclusion of trial would have taken sometime.

25. Reliance has also been placed on order dated 5.8.2022 passed in Criminal Appeal No. 1169 of 2022, titled as Gopal Krishan Patra alias Gopalrusma Vs. Union of India, whereby the Supreme Court has enlarged the petitioner on bail, considering the custody of 1 year 7 months undergone by him, in a case involving offence punishable under Sections 8, 20, 27(a), 28 and 29 of NDPS Act.

26. Learned counsel for the petitioners has also referred order dated 28th July, 2022, passed by Co-ordinate Bench of this Court, in Cr.M.P. (M) No. 1255 of 2022 titled as Puran Chand Vs. State of H.P., wherein a person, arrested for having possession of 1.996 Kilograms of charas, was enlarged on bail for length of custody of more than 2 years 9 months.

27. Learned counsel for the petitioners has also placed reliance upon order dated 4.11.2022 passed by Co-ordinate Bench of this Court in Cr.M.P. (M) No. 2273 of 2022, titled Madan Lal Vs. State of H.P., wherein accused arrested on 27.12.2019, for having found in possession of 1.695 Kilograms of charas, was enlarged on bail for non completion of trial as accused had suffered detention of 2 years 10 months.

28. Learned Additional Advocate General referring order passed by the Supreme Court, dated 19.7.2022 in Narcotics

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3444, has contended that period of detention cannot be a ground for enlarging the petitioners on bail.

29. Learned counsel appearing for the petitioner submit that in Mohit Aggarwal's case huge quantity of 20 Kilograms of Tramadol, against minimum commercial quantity of 250 grams, was recovered, whereas in present case recovered quantity is little more than commercial quantity. It has been further contended that the Supreme Court in order dated 11.7.2022 in case titled as Satinder Kumar Antil Vs. Bureau of Investigation, (2022) 10 SCC 51, has observed that period of detention is also a relevant factor for considering the bail application alongwith other factors.

30. Learned counsel for the petitioners have submitted that petitioners are ready to furnish sureties and to abide by any conditions imposed by the court for enlarging the petitioners on bail for ensuring their presence during trial.

31. Taking into consideration the entire facts and circumstances, but without commenting on merits thereon and taking into account factors and parameters required to be considered at the time of adjudication of bail application as propounded by the Courts, including the Supreme Court, I am of the considered opinion that at this stage petitioners may be enlarged on bail.

32. Accordingly, present petitions are allowed and petitioners are ordered to be enlarged on bail, subject to their furnishing personal bonds in the sum of `2,00,000/- each with one surety each in the like amount, to the satisfaction of trial Court/Special Judge and upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to assure presence of the petitioner at the time of trial:-

(i) That the petitioners shall make themselves available to the Police or any other Investigating Agency or Court in the present case as and when required;

(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/her from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioners shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioners shall not commit the offence similar to the offence to which they are accused or suspected;

(v) that the petitioners shall not misuse their liberty in any manner;

(vi) that the petitioners shall not jump over the bail;

(vii) that in case petitioners indulges in repetition of similar offence(s) then, their bail shall be liable to be cancelled on taking appropriate steps by prosecution;

(viii) that the petitioners shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial; and

(ix) the petitioners shall not leave India without permission of the Court.

33. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioners, enlarged on bail, as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

34. In case the petitioners violate any conditions imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

35. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

36. Observations made in this petition hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail applications.

37. The parties are permitted to produce copy of order downloaded from the High Court website and trial Court shall not insist for certified copy of the order, however, if required, passing of order can be verified from the High Court website or otherwise.

The petitions stand disposed of in the aforesaid terms.