

(2020) 10 SHI CK 0021

In the High Court Of Himachal Pradesh

Case No : CRMPM No. 1042, 1043, 1045 Of 2020

Firoz Khan And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15, 29
Indian Penal Code, 1860 — Section 34, 323, 342, 382

Citation : (2020) 10 SHI CK 0021

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Karan Singh Kanwar, Sumesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. These three bail petitions have been filed under Section 439 of the Code of Criminal Procedure, by the petitioners, for grant of regular bail in FIR No.244 of 2019, dated 06.08.2019, registered at Police Station Paonta Sahib, District Sirmour, H.P., under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances, Act (hereinafter referred to 'ND&PS, Act' for short) .

2. Case of the prosecution is that a police party was present during the course of investigation with regard to FIR No.243 of 2019 dated 06.08.2019, registered at Police Station Paonta Sahib, District Sirmour, H.P., under Sections 342, 382, 323, 34 of the Indian Penal Code, when complainant Manoj Kumar, who was present at Behral Barrier, stated that his vehicle, bearing No.HP17C-1729 Indigo Car was stationed at around 1 Km. ahead to Yamunanagar road. Thereafter, a raiding party was prepared. The vehicle in issue was found stationed 1 Km. beyond the Barrier. When the vehicle in issue was searched, from it, two plastic bags containing 25. 220 Kgs. and 28.500 Kgs. Churapost/Bhukki were recovered.

Thereafter, steps were taken by the police party in consonance with the ND&PS Act as transportation of Churapost/Bhukki without permission in a vehicle, is an offence under the provisions of ND&PS Act. It is further the case of the prosecution that on 30.05.2020, an independent witness, namely, Samrez Khan, voluntarily came to the Police Station and got his statement recorded under Section 161 of the Code of Criminal Procedure, inter alia, to the effect that on 05.08.2019, he was present at a Dhaba, where complainant Manoj had come alongwith two police officials to have tea, but left without having the same. Thereafter, Firoz Khan called Bobby Sandhu on phone and asked him to call complainant Manoj on any pretext to Bata Mandi. Manoj Kumar came in his vehicle, bearing No.HP17C-1729 to the Dhaba at around 07:00 p.m., where Firoz Khan, Sanjay Khan, Jangu and his son Lucky were present. When Manoj got out of his vehicle, Jangu caught hold of Manoj from his hair and forcibly made him to sit in his car. Thereafter, Jangu, Lucky and Firoz also sat in a car and took it towards Crusher. After one hour, Firoz Khan returned back in the car of Mauji to the Dhaba and asked Mauji to sit in the car and stated that two plastic bags have been placed in the boot space (diggy) of the car of Mauji. After some time, Firoz Khan came back on his Scooty and asked him to take the car of Mauji towards Yamunanagar. He obeyed the directions of Firoz Khan, being his driver, and on his instructions, he stopped the car on the road towards Paonta Sahib. Thereafter, he accompanied Firoz Khan on a Scooty towards Hathini Kund and returned back to the vehicle of Mauji. Phone of Mauji was was placed by Firoz Khan below the conductor seat in the car and the keys of the vehicle were placed in their place. At around 10:30 p.m., he came to know that Firoz Khan had parked the vehicle at Yamunanagar road as Firoz Khan told Bobby Sandhu and Lucky that he had placed two bags of poppy husk (Bhukki) in the car of Mauji. This witness further deposed that earlier he did not disclose these facts to the police as he was frightened that in the event of doing so, the accused will kill him. As per prosecution, thereafter, statement of said witness was also recorded under Section 164 of the Code of Criminal Procedure, which led to the arrest of the present petitioners.

3. Learned counsel for the petitioner has argued that the entire case made up against the petitioners is concocted which is evident from the fact that despite the contraband having been recovered as far back as on 06.08.2019 from the vehicle of one Mr. Manoj Kumar, whereas, no action was taken against him, yet, the petitioners were arrested belatedly and, that too, on the bald statement of one Samrez Khan, so made before the police on 30.05.2020. As per him, the petitioners, in fact, have been made scapegoat in the case to save the actual culprits. He has further argued that as of now, the investigation is complete and as the challan also stands filed in the Court, therefore, no purpose will be going to be served by keeping the petitioners in custody and the petitioners shall comply with all the conditions which may be imposed by the Court in case of grant of the bail to them.

4. Opposing the bail petitions, learned Additional Advocate General has argued

that taking into consideration the gravity of offence alleged against the petitioners and further the fact that there is each and every possibility of the petitioners trying to tamper with the evidence or trying to influence the witnesses, in case they are ordered to be released on bail, the petitions, being devoid of any merit, be dismissed. He has further argued that the prosecution has acted in a fair and transparent manner in the case and it is only after enough evidence was there indicating the involvement of the petitioners in the commission of offence alleged against them that they have been arrested in the case. He, thus, prayed that in this background, the petitions deserve dismissal.

5. I have heard learned counsel for the petitioners as well as learned Additional Advocate General and have gone through the averments made in bail petitions.

6. It is not in dispute that the contraband was recovered from the vehicle of Manoj Kumar on 06.08.2019. It is also not in dispute that as between 06.08.2019 and 30. 05.2020, there was no material gathered by the prosecution in the course of investigation, which implicated the petitioners with the commission of crime with regard to FIR No.244 of 2019. It is just on the basis of statement of independent witness, namely, Samrez Khan, which was purportedly voluntarily made by him to the police on 30. 05.2020 that the petitioners were apprehended by the police. For the purpose of adjudication of these bail petitions, this Court observes that if version of Samrez Khan is to be believed, then doubts are created with regard to lodging of FIR by Manoj Kumar against the petitioners, i.e., FIR No.243 of 2019, because as per Samrez Khan whatever was done by the present petitioners was done in the presence of Manoj Kumar, which is not so revealed in the FIR filed by Manoj Kumar. Besides this, the State has not been able to satisfy the Court as to what it did between 06.08.2019 and 30.05.2020, in the course of investigation, because if the version of prosecution is to be believed, vis- à -vis lodging of FIR No.243 of 2019 against the present petitioners at the behest of Manoj Kumar, prudence demanded that police ought to have carried out investigation in the light of complaint lodged by Manoj Kumar.

7. Be that as it may, the fact of the matter is that as of now, the investigation is complete and challan stands filed in the Court of Law. That being the case, in my considered view, in the peculiar facts and circumstances of this case, no purpose will be served by retaining the petitioners in Judicial Custody and accordingly, these bail petitions are allowed and the petitioners are ordered to be released on bail in FIR No.244 of 2019, dated 06.08.2019, registered at Police Station Paonta Sahib, District Sirmour, H.P., under Sections 15 and 29 of the Narcotic Drugs and Psychotropic Substances, Act, on their furnishing personal bail bond each to the tune of with one surety each in the like amount to the satisfaction of the concerned ACJM/JMIC within a period of two weeks from today, subject to the following conditions:-

i) Petitioners shall attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

ii) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever.

iii) They shall not 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 the Police Officer; and

iv) They shall not leave the territory of India without prior permission of the Court.

8. It is clarified that findings which have been returned by this Court while deciding these petitions are only for the purpose of adjudication of the present bail petitions and learned trial Court shall not be influenced by any of the findings so returned by this Court in the adjudication of these petitions during the trial of the case. It is further clarified that in case the petitioners do not comply with the conditions which have been imposed upon them while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of the bail. The petitions stand disposed of in the above terms.

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