

(2022) 12 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2455 Of 2022

Gagandeep Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 05-12-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 29, 37, 61, 85

Citation : (2022) 12 SHI CK 0007

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Reeta Hingmang, Sumesh Raj, Dinesh Thakur, Arvind Sharma

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J, J

1. By way of this petition, a prayer has been made for release of the petitioner on bail, in F.I.R. No.76 of 2022. dated 11.03.2022, registered against him at Police Station Nalagarh, District Solan, H.P., under Sections 20, 29, 61 and 85 of the Narcotic Drug & Psychotropic Substances Act (hereinafter to be referred as 'NDPS Act', 1985.

2. The case of the prosecution is that on 11.03.2022, a police party headed by Inspector Mohinder Singh, received information that a taxi bearing registration No.CH-02 AA-3733 was on its way from Kullu. There were about four/five occupants in the vehicle and the occupants of the car were near Baglaher Bridge where they were in the course of finding persons to whom the contraband which was in their possession could be sold. As per the prosecution, the police party was informed that in case the vehicle alongwith persons could be apprehended then large quantity of contraband could be recovered. This information was received by the police party at around 1.30 a.m. It is further the case of the prosecution that after completing codal formalities, a raiding party was constituted and when the said party reached Baglaher Bridge at Ravindra-

Nalagarh-Swarghat Road, it found the vehicle parked. The raiding party apprehended the vehicle and after giving their introduction they asked the driver to show his particulars who disclosed the same. Other occupants also disclosed their identification which included the present petitioner. In the course of search, Charas weighing 1.236 kg was recovered from a bag which was kept inside the car above the hand break. Upon recovery of the said contraband, after completion of necessary formalities the accused were arrested including the present petitioner.

3. Learned counsel for the petitioner submitted that the petitioner is innocent and has been wrongly implicated by the prosecution in the matter. Learned counsel submitted that the petitioner happened to be known to the driver of the vehicle and on his insistence, a few days before the alleged contraband was recovered, the petitioner had accompanied the driver of the vehicle alongwith couple of passengers to Manikaran in District Kullu, H.P. and thereafter, they had proceeded to Kullu and were on their way back from Kullu to Ambala, when the car was apprehended. She further argued that all the other occupants of the vehicle were strangers, as far as petitioner is concerned. He has no connection with them. He was not aware about the contents of the bag from which the alleged contraband was recovered. In these circumstances, she submitted that as the petitioner is innocent and further as the contraband otherwise has not been recovered from conscious possession of the petitioner, this petition be allowed and the petitioner be ordered to be released on bail.

4. The petition is opposed by learned Additional Advocate General, inter alia, on the ground that in terms of the investigation, all the accused with common intent had gone to District Kullu, H.P. to purchase the contraband. They had reached Manikaran on the evening of 09.03.2022. They had all stayed together and after procuring the contraband while on their way back, they were all apprehended by the police in possession of 1.236 kg of charas, which is a commercial quantity. Learned Additional Advocate General further argued that as the contraband recovered from the accused is of commercial quantity, therefore, provisions of Section 37 of the NDPS Act are attracted and in these circumstances, the present petition is liable to be dismissed because the fact of the matter is that the petitioner was one of the occupants of the vehicle from which the contraband was recovered and it is not as if he had boarded the vehicle a few kilometers from the spot where the same was apprehended. As the investigation had revealed, all the occupants of the car had gone to District Kullu together and they were on their way back from Kullu and were together when they were apprehended by the police party. Accordingly, a prayer has been made that the present petition be dismissed.

5. I have heard learned counsel for the parties and have gone through the petition as well as the status report.

6. Whether or not, the petitioner is guilty of the offence, of course is a matter of trial. As per the prosecution, the contraband which has been recovered from the

car in which the petitioner was travelling alongwith other co-accused is 1.263 kg, Meaning thereby that this is a commercial quantity and in this view of the fact, but natural, the provisions of Section 37 of the NDPS Act come into play.

7. In view of what has been argued by learned counsel for the parties, as also learned Additional Advocate General, at this stage, this Court cannot record its satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of the offence which is alleged to have been committed by him.

8. Hon'ble Supreme Court in *Narcotic Control Bureau Vs. Mohit Aggarwal*, Criminal Appeal Nos. 1001-1002 of 2022 (Arising out of Petitions for Special Leave to Appeal (Crl.) No. 6128 of 2021), while discussing the provisions of Section 37 of the NDPS Act, has been pleased to hold that at the stage of examining an application for bail, in the context of provisions of Section 37 of the NDPS Act, the Court is not required to record a finding that the accused person is not guilty and the Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the provisions of NDPS Act or not. The entire exercise as the Court is expected to undertake at said stage is for the limited purpose for releasing him on bail and the focus is on the availability of reasonable ground for believing that the accused is not guilty of the offences, he has been charged with.

9. In *Union of India (NCB) ETC Versus Khalil Uddin Etc.* 2022 LiveLaw (SC) 878, Hon'ble Supreme Court has been pleased to hold that in its considered view in the face of mandate of Section 37 of the NDPS Act, the High Court could not and ought not to have released the accused therein on bail in view of the fact that large quantity of contraband was found in the car in which the petitioner was travelling.

10. In the present case, the petitioner was arrested alongwith other accused while travelling in a car, from which commercial quantity of contraband was recovered. The contention of the petitioner that he is innocent, at this stage, is not substantiated from anything on record and to the contrary, the status report demonstrates that he was along with other accused, which prima facie demonstrates that there was a common intent on the part of all the accused in the commission of the crime.

11. Therefore, as already mentioned hereinabove, this Court is not in a position to record its satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of the offences alleged to have been committed by him.

12. Accordingly, as this Court is not satisfied that there is any ground for ordering release of the present petitioner, this petition is dismissed. It is made clear that these observations are only for the purpose of adjudication of the present petition and the same shall not influence the course of the trial.