

(2018) 09 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.1195 of 2018

Gopal Singh

APPELLANT

Vs

State of Himachal Pradesh & Anr.

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167(2), 439

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 29

Citation : (2018) 09 SHI CK 0029

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Amit Kumar Dhumal, Dinesh Thakur, S.C. Sharma

Final Decision : Disposed Off

Judgement

Sandeep Sharma, J.

1. Bail petitioner namely Gopal Singh, who is behind bars for the last six months, has approached this Court by way of instant bail petition filed under

Section 439 of Cr.PC, praying therein for grant of regular bail in FIR No. 33/18 dated 19.3.2018, under Section 20 of Narcotic Drugs and

Psychotropic Substances, Act (in short "the Act"), registered at police station Barotiwala, District Solan, H.P.

2. Sequel to order dated 12.9.2018, ASI Gopal Singh, I.O., P.S. Barotiwala, District Solan, H.P., has come present alongwith records. Record perused

and returned. Mr. Dinesh Thakur, learned Additional Advocate General, has also placed on record status report prepared on the basis of investigation

carried out by the Investigating Agency.

3. Perusal of report/record reveals that on 18.3.2018, bail petitioner along with other co-accused namely Sohan Singh came to be apprehended by

patrolling party at a place near Sikka Hotel, Baddi Barotiwala Road. Allegedly, police recovered 1kg 23 grams of charas from the co-accused Sohan

Singh, whereas 862 grams of charas was recovered from the possession of the bail petitioner. Police registered FIR as detailed herein above, against

the bail petitioner as well as other-co-accused under Section 20 of the Act. At the time of the presentation of the challan, Section 29 was not

incorporated, because police was unable to find conspiracy, if any, among both the accused.

4. Bail petitioner had earlier approached this Court by way of CrmP No. 483 of 2018, seeking therein his bail, however same was withdrawn with

liberty to file afresh at appropriate stage vide order dated 1.6.2018. Subsequently, on 1.8.2018, bail petitioner again moved an application under Section

167 (2) of the Cr.PC, before the learned Special Judge, praying therein for default bail on account of delay in filing the charge sheet. Applicant

claimed before the learned trial Court/ learned Special Judge that since prosecution failed to file charge sheet within a period of 90 days, he is entitled

for default bail, however, learned court below rejected the prayer on the ground that since commercial quantity came to be recovered from the

conscious possession of the bail petitioner and co-accused, time for filing charge sheet was 180 days and as such, he is not entitled for default bail in

terms of Section 167 (2) of Cr.PC.

5. Mr. Viishwaraj Chauhan, learned counsel representing the bail petitioner, states that present bail petition before this Court has been filed in the

changed circumstances because now charge sheet stands filed in the court and prayer having been made by the bail petitioner for default bail in terms

of Section 167 (2) Cr.PC, has been rejected by the court below. While inviting attention of this Court to the record/status report, learned counsel

contends that since no case under Section 29 Cr.PC, stands registered against the bail petitioner, finding returned by the court below, to the extent that

since commercial quantity of contraband was recovered, time for filing charge sheet was 180 days not 90 days, is not in accordance with law and as

such, order passed by the learned trial Court needs to be quashed and set-aside.

6. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly acknowledging that Section 29 of the Act is not mentioned in the FIR and as

per investigation, two separate recoveries were effected from the conscious possession of the bail petitioner as well as other co-accused, contends

that on 19.3.2018, bail petitioner and co-accused were apprehended by the police at the same place carrying 1 kg 885 grams of charas i.e. commercial

quantity and as such, prosecution could file charge sheet within a period of 180 days and as such, there is no error committed by the court below while

rejecting the default bail filed on behalf of the present bail petitioner.

7. I have heard the learned counsel for the parties as well gone through the record of the case.

8. Undisputedly, record/status report reveals that 19.3.2018, bail petitioner as well as other co-accused Sohan Singh, were apprehended with Charas

weighing 1 kg 885 grams at a place near Sikka Hotel Baddi Barotiwala road, but it is admitted case of the Investigating Agency that two separate

recoveries were effected from the bail petitioner and co-accused. As per investigation, 862 grams of charas was recovered from the conscious

possession of the bail petitioner, whereas 1kg 23 grams of charas was recovered from the co-accused Sohan Singh. It is also not in dispute that

application for bail in default under Section 167 (2) came to be filed on behalf of the present bail petitioner before filing of the charge sheet, however,

perusal of order dated 9.8.2018, passed by the learned Special Judge-II, Solan, District Solan, (Camp at Nalagarh) suggests that Investigating Agency

in its report had disclosed that during the personal search , co-accused Sohan Singh was found in possession of 1kg 23 grams of charas, whereas

present bail petitioner Gopal Singh was found in possession of 862 grams of Charas. Learned Court below while rejecting the bail petition having been

filed by the petitioner though specifically recorded that case was registered under Section 20 of Act, against the bail petitioner-accused as well as

accomplice namely Sohan Singh at PS Barotiwala District Solan, H.P., but taking note of the contention raised by the Public Prosecutor that bail

petitioner along with his co-accused was apprehended carrying contraband i.e. 1kg 885 grams Charas, i.e. commercial quantity, returned finding that

period of presentation of challan in the court in case of the accused carrying contraband of commercial quantity is 180 days and not 90 days and as

such, petitioner is not entitled to default bail.

9. Having carefully examined aforesaid finding returned by the learned court

below while dealing with the application for default bail under Section 167 (2) Cr.PC., this Court finds considerable force in the argument of learned counsel for the petitioner that court below has not appreciated the factual aspect of the matter to the extent that on the date of alleged incident, two separate and distinct recoveries were effected from the persons of the petitioner as well as other co-accused. No doubt, on the date of alleged incident, police had apprehended present bail petitioner along with co-accused Sohan Singh carrying contraband i.e. 1 kg 885 grams, but as has been noticed herein above, two distinct recoveries were effected, wherein only 862 grams of charas, which is less than the commercial quantity, was recovered from the conscious possession of the bail petitioner.

10. Since at the time of consideration of the aforesaid application, charge sheet was not before the court below, this Court has reason to believe that court below had no occasion to deal with the aforesaid aspect of the matter and as such, it would be in the interest of justice, in case learned court below is directed to decide the matter afresh taking note of the charge sheet having been filed by the Investigating Agency.

11. Consequently, in view of above, present petition is disposed of and matter is remanded back to the court below to decide afresh taking note of the charge sheet having been filed by the Investigating Agency. It is clarified that this Court has not expressed any opinion on the merits of the case and any observation made herein above shall remain confined to the present proceedings only and court below shall decide the matter afresh in accordance with law. It is further clarified that court below while deciding the application at hand afresh, shall not be influenced by the fact that charge sheet now stands filed because admittedly application under Section 167 (2) praying therein for default bail on behalf of the petitioner came to be filed, prior to the filing of the charge sheet.

12. Now let the matter be listed before the court below on 5.10.2018, for consideration, on which date parties shall remain present before the Court.

Learned counsel for the petitioner undertakes that on the next date of hearing, bail petitioner shall be represented by some counsel in the court below so that petition is disposed of at an early date.