

(2016) 03 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Cr.MP(M) No. 109 of 2016

Goverdhan Dass son of Shri Maya Ram	APPELLANT
Vs	
State of H.P.	RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 19, 37

Citation : (2016) 2 CriCC 164 : (2016) 4 Crimes 228 : (2016) ILRHP 166 :
(2016) 2 RCRCriminal 987

Hon'ble Judges : P.S. Rana, J.

Bench : Single Bench

Advocate : B.S. Thakur, Advocate, for the Appellant; M.L. Chauhan and
Rupinder Singh, Additional Advocates General, for the Respondent

Final Decision : Disposed Off

Judgement

P.S. Rana, J. - Present bail application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail relating to FIR No. 13 of 2016 dated 22.1.2016 registered under Sections 18, 29 and 61 of NDPS Act 1985 at P.S. Rampur Bushehr District Shimla (H.P.)

2. It is pleaded that petitioner has not committed any offence and petitioner has been falsely implicated in present case. It is pleaded that quantity recovered from possession of petitioner is not commercial quantity and petitioner is entitled to be released on bail. It is pleaded that bail petitioner is the only bread earner of his family. It is pleaded that investigation is completed and no recovery is to be effected from petitioner and further pleaded that custodial interrogation is not required by investigating agency. It is pleaded that petitioner would not tamper with prosecution witnesses in any manner and petitioner undertakes that he would abide by directions of Court.

3. Per contra police report filed. As per police report on 22.1.2016 HC Janak Raj along with HC Lal Chand and Rajesh were on patrolling duty at about 4 PM in the

evening and when police officials were present at NH-05 near Nirath then Prem Singh Chauhan Up-Pardhan G.P. Nirath came and started conversation with police officials. There is recital in police report that two persons came from NH-05 and one of persons was in possession of a bag. There is recital in police report that one of co-accused when saw the police officials he handed over the bag to other co-accused and tried to run away. There is recital in police report that accused persons were caught and accused persons disclosed their names as Goverdhan Dass and Vicky Thakur. There is recital in police report that when bag was checked then polythene bag was recovered and in polythene bag 500 grams of opium was found. There is also recital in police report that NCB form in triplicate was prepared and contraband was sealed and seizure memo was prepared. There is recital in police report that site plan was prepared and photographs also taken and statements of prosecution witnesses under Section 161 Cr.P.C. also recorded. There is recital in police report that contraband sent to chemical examination in office of FSL Junga and as per chemical analyst report sample was of opium. There is recital in police report that investigation stood completed and petitioner is in judicial custody. There is recital in police report that petitioner is spoiling life of youth persons by way of supplying opium. There is further recital in police report that if petitioner is released on bail then petitioner would threat the prosecution witnesses.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the non-petitioner and also perused the record.

5. Following points arise for determination in this bail application:-

1. Whether bail application filed under Section 439 Cr.P.C. by petitioner is liable to be accepted as mentioned in memorandum of grounds of bail application?

2. Final Order.

Findings on Point No.1 with reasons

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and petitioner did not commit any criminal offence as alleged by investigating agency cannot be decided at this stage. Same fact will be decided when case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of the petitioner that investigation is completed and custodial interrrogation of petitioner is not required in present case and on this ground bail application be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) Character of evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger

interests of the public or the State. See AIR 1978 SC 179 titled Gurcharan Singh and others v. State (Delhi Administration). Also see AIR 1962 SC 253 titled The State v. Captain Jagjit Singh. It was held in case reported in 2012 Cri. L.J. 702, Apex Court DB titled Sanjay Chandra v. Central Bureau of Investigation that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period. It is well settled law that accused is presumed to be innocent till convicted by competent Court of law. In view of the fact that investigation is completed and in view of the fact that petitioner is not required for custodial interrogation and in view of the fact that there is no allegation of recovery of commercial quantity of contraband and in view of the fact that trial will be concluded in due course of time Court is of the opinion that it is expedient in the ends of justice to release the petitioner on bail at this stage of case.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if bail is granted to petitioner then petitioner will commit similar offence and on this ground bail application be declined is rejected being devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that conditional bail will be granted to petitioner. Court is of the opinion that if petitioner will flout the terms and conditions of conditional bail order then non-petitioner will be at liberty to file application for cancellation of bail in accordance with law. In view of above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order)

9. In view of my findings on point No.1 bail application filed by petitioner under Section 439 Cr.P.C. is allowed subject to furnishing personal bond to the tune of RS. 5 lac (Rupees five lacs only) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will join investigation of case whenever and wherever directed by Investigating Officer in accordance with law. (ii) That petitioner will attend the proceedings of learned trial Court regularly till conclusion of trial of case. (iii) That petitioner will 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 the Court or to any police officer. (iv) That petitioner will not leave India without the prior permission of the Court. (v) That petitioner will give his residential address in written manner to the Investigating Officer and Court so that petitioner can be located in short notice. (vi) That petitioner will not commit similar offence qua which he is accused. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of. Bail petition filed under Section 439 of Code of Criminal Procedure stands

disposed of.