

(2023) 02 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 245 Of 2023

Hanso

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2023) 02 SHI CK 0007

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Kulbhushan Khajuria, Vishal Panwar, Rajat Chauhan

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. By way of instant petition, filed under Section 439 of the Criminal Procedure Code, the petitioner is seeking bail in case F.I.R. No. 12/2023, dated 07.01.2023, registered at Police Station Sadar, District Mandi, H.P., under Section 20 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

2. The prosecution story, in brief, is that on 7. 01.2023, the police party had laid a nakka at Bindravani Four lane road. Around 12:30 p.m., a Punjab Roadways bus, bearing registration No. PB65-BB-4890 came from Pandoh side, which was signaled to stop. Thereafter, the police party started checking the bags of the occupants of the bus and when they proceeded to check the bag of the lady sitting on seat No. 29 and asked her as to what she was carrying in her bag, she got perplexed. On suspicion, the police party tried to associate independent witnesses amongst the occupants of the bus, but they refused to become witness, as such, the police party asked the Driver and the Conductor of the bus to become witnesses in the proceedings and they agreed to become witnesses.

On asking, the Driver of the bus disclosed his name as Kulbir Singh and Conductor of the bus disclosed his name as Lakhbir Singh, in whose presence, name of the lady was asked and she disclosed her name as Hanso (petitioner herein), resident of Patiala (Punjab), who was carrying a bag with her. On opening of the small zip of the said bag, a bus ticket was found. On opening of the big zip, a red coloured ladies coat was found and when pocket of the said coat was checked, a blue coloured carry bag was found, which was tied with knot. When knot of the said carry bag was opened, a black coloured substance in round shape was recovered, which on the basis of experience was found to be charas/cannabis. On weighment, the contraband was found to be 496 grams. Thereafter, the police completed all the codal formalities and FIR as detailed hereinabove was registered against the petitioner. Consequently, the petitioner was arrested.

3. Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated in this case. He has further contended that investigation in this case is complete and nothing remains to be recovered at the instance of the petitioner and as such, the petitioner, who is a lady and is in custody since her arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner, she is not entitled to be enlarged on bail.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the case and I am of the firm opinion that the petitioner has made out a case for grant of bail, as a perusal of the record indicates that the petitioner has been arrested for possessing 496 grams of charas/cannabis, which is an intermediate quantity. Therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case. The petitioner was arrested on 07.01.2023 and since then she is behind the bars. There is no evidence on record to suggest that the petitioner will tamper with the prosecution evidence or will flee from justice, if released on bail. Moreover, chargesheet in the case is yet to be filed and the trial may take sufficiently long time to conclude. Therefore, no fruitful purpose will be served if the petitioner, who is a lady, is kept behind the bars for an unlimited period.

6. Considering the overall facts and circumstances of the case and since the quantity of charas/cannabis involved in this case is an intermediate quantity, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in her favour. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case F.I.R. No. 12/2023, dated 07.01.2023, registered at Police Station Sadar, District Mandi, H.P., under Section 20 of NDPS Act, shall be forthwith released on bail, subject to her furnishing personal bond to the tune of Rs. 1,00,000/- (Rupees one lac), with one surety in the like amount to the

satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

- (i) that the petitioner will appear before the Court and the Investigating Officer whenever required ;
- (ii) that she 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 any facts to the Court or the police;
- (iii) that she will not tamper with the prosecution evidence nor he will try to win over the Prosecution witnesses or terrorise them in any manner;
- (iv) that she will not repeat the offence, as is alleged to have been committed by her.
- (v) that she will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.
- (vi) that she will not leave India without prior permission of the Court.

7. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioner.

8. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.