

(2022) 11 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2449 Of 2022

Kamal Chand

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 29, 37, 67

Citation : (2022) 11 SHI CK 0035

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Ajay Chandel, Desh Raj Thakur, Narender Thakur

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Petitioner is an accused in case FIR No. 0193/2022, dated 06.09.2022, registered at Police Station Bhuntar, District Kullu, H.P., under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "ND&PS Act").

2. Petitioner has prayed for grant of pre-arrest bail in the above noted case.

3. From the status report filed on behalf of the respondent, it is revealed that on 06.09.2022, a police party noticed one Kailash Singh under suspicious circumstances, who tried to flee away from the scene after noticing police. While running from the spot, the said Kailash Singh is stated to have thrown a packet on the road. He was apprehended on suspicion. The carry bag thrown by him on the road was checked and 2.144 kilograms of 'Charas' was recovered. The case was registered and the said Kailash Singh was formally arrested. As per respondent, during investigation, accused Kailash Singh disclosed that he alongwith present petitioner had procured the 'Charas' together and both were involved in selling the same. It is further alleged by the respondent that during investigation exchange of phone calls between the accused Kailash Chand and

petitioner have been found.

4. On the other hand, petitioner has pleaded his innocence. It is contended on behalf of the petitioner that though the investigation is almost complete, no incriminating evidence has been collected by respondent against the bail petitioner. The bail petitioner is stated to be permanent resident of Village Sees Post Office Thella, Tehsil Bhuntar, District Kullu, H.P. and there is no likelihood of his absconding from the course of justice. He has further undertaken to abide by all the terms and conditions as may be imposed against him.

5. I have heard learned counsel for the petitioner and also learned Additional Advocate General for the respondent/State and have also gone through the contents of the status report as well as the record of the investigation.

6. The record of investigation available with the respondent and contents thereof reflected in the status report reveals that the petitioner has been implicated on the basis of disclosure made by co-accused Kailash Singh. It is also alleged that there has been exchange of phone calls between both of them. Save and except the aforesaid material no other evidence is stated to be available with respondent against the present bail petitioner.

7. Though, the case in hand pertains to recovery of commercial quantity of Charas and will attract the rigors of Section 37 of ND&PS Act, however, in the peculiar facts of the case, it cannot be any impediment in grant of bail to the petitioner as there is no material on record showing prima facie involvement of the petitioner in the case.

8. Except the existence of CDRs and disclosure statement of co-accused no other material appears to have been collected against the petitioner. The disclosure made by co-accused cannot be read against petitioner as per mandate of Hon'ble Supreme Court in Tofan Singh Vs State of Tamil Nadu (2021) 4 SCC 1. Further, in State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and another, (2022) 2 Scale 14, the Hon'ble Supreme Court has held as under:-

"10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are accordingly, upheld

and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

9. In Pallulabid Ahmad's case (supra), accused were ordered to be released on bail by Karnataka High Court in a case registered against them for commission of offences under NDPS Act involving commercial quantity. In that case also direct recovery was not affected from the accused person(s) so released on bail. In Special Leave Petition preferred against the order directing the release of accused person(s) on bail in that case, Hon'ble Supreme Court upheld the order of Karnataka High Court and one of the contention regarding availability of CDR details of some of accused person(s) was dispelled as a ground to deny the bail to them.

10. Thus, taking into consideration the evidence with respect to the availability of CDR details and the disclosure statements of co-accused, bail cannot be denied to the petitioner in the facts and circumstances of the case. This court is of the view that the implication of petitioner in the case is not established prima facie.

11. No past history of petitioner regarding his involvement in similar or any other offence has been pointed out, therefore, there is no reason to presume that petitioner, if enlarged on bail, is likely to commit similar offence.

12. It is not the case of the respondent that in case of enlargement of petitioner on bail, the trial before learned Special Judge shall be adversely affected. Petitioner is permanent resident of Village Sees Post Office Thella, Tehsil Bhuntar, District Kullu, H.P. and there is no likelihood of his absconding from the course of justice

13. In the light of above discussion and in the peculiar facts and circumstances of the case, the instant petition is allowed. In the event of arrest of the petitioner in case FIR No. 0193/2022, dated 6. 09.2022, registered at Police Station Bhuntar, District Kullu, H.P., under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, he shall be released on bail on his furnishing personal bond in the sum of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/ Arresting Officer, however, subject to following conditions:-

(i) That the petitioner shall regularly join the investigation as and when required to do so;

(ii) That the petitioner shall 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 from disclosing such facts to the Court or to any police officer;

(iii) That the petitioner shall not leave the country without the express permission of the Court;

14. However, it is made clear that the observations made hereinabove shall have no bearings on the merit of the case and shall be construed only for the disposal

of the present.