
(2020) 10 SHI CK 0142

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1798 Of 2020

Karan Khimta

APPELLANT

Vs

Vs State Of Himachal Pradesh

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 22, 29, 37
Code Of Criminal Procedure, 1973 — Section 439
Evidence Act, 1872 — Section 27

Citation : (2020) 10 SHI CK 0142

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Hardeep Verma, Anil Jaswal, Amit Dhumal

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner, a co-accused alongwith three others in FIR No.234/2020, dated 04.09.2020, registered under Sections 20, 22 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (the Act hereinafter) at Police Station Sadar, District Mandi, H.P., is seeking regular bail under Section 439 of the Code of Criminal Procedure.

2. I have heard learned counsel for the parties and gone through the status report.

3. The gist of the prosecution case against the bail petitioner as it comes out from the status report is that on 4.9.2020 at around 12.35 P.M., a police party while patrolling area near Beauli chowk at NH-3 Kullu stopped a private bus coming from Pandoh side for routine checking. While inspecting the bus, behaviour of two persons sitting next to each other on a seat meant for holding two persons appeared strange to the police personnel. They could not satisfactorily answer the queries of the police personnel. Getting suspicious,

search of their luggage was carried out in accordance with law. Search of luggage held by one of the persons occupying seat No.8, who disclosed his identity as Karan Khimta (petitioner herein) led to recovery of cannabis measuring 124 grams. Whereas from the luggage of the other person occupying seat No.7, who gave his identity as Dixit Kumar (petitioner in Cr.MP(M) No. 1840/2020), MDMA measuring 1.60 grams was recovered. The entire procedure as contemplated under the Code of Criminal Procedure as well as the Act was followed leading to registration of the FIR in question. Karan Khimta and Dixit Kumar were arrested on 4.9.2020.

Accused Dixit Kumar recorded his confessional statement under Section 27 of the Indian Evidence Act to the effect that the contrabands in question were purchased by him with co-accused Karan Khimta from the Tarun Kumar (petitioner in Cr.MP(M) No.1739/2020) and Onkar (petitioner in Cr.MP(M) No.1740/2020). As per status report, Dixit Kumar disclosed purchasing of cannabis from Onkar and MDMA from Tarun Kumar on 3.9.2020 against cash payment of Rs.12000/- and Rs.7500/-respectively. On the basis of above disclosure, Onkar and Tarun Kumar were arrested on 6.9.2020. An earlier bail petition preferred by the petitioner has been rejected by the learned Special Judge Mandi on 25.09.2020.

4. Learned counsel for the petitioner raised the plea of innocence and false implication. He further submitted that the bail petitioner is young and of impressionable age. The quantity of cannabis allegedly recovered from the bail petitioner falls in the 'intermediate quantity', therefore, rigors of Section 37 of the Act will not be attracted. Learned counsel further submitted that the petitioner will abide by all the conditions, which may be imposed upon him in case of grant of bail and that he will not influence the witnesses or temper with the prosecution evidence in any manner.

Learned Additional Advocate General has submitted that in case the Court is inclined to grant bail to the petitioner, then stringent conditions may be imposed upon him.

5. The quantity of cannabis allegedly recovered from the bail petitioner weighs 124 grams, which though falls in now commonly known as 'intermediate quantity' but is near to 100 grams notified as small quantity under the Act. Therefore, the rigors of Section 37 of the Act will not be applicable in the instant case. Status report does not indicate any previous criminal antecedents of the bail petitioner. The investigation in the case is complete and Challan stands presented in the Court of competent jurisdiction on 22.09.2020. Considering all these aspects and also the fact that the petitioner is behind the bars w.e.f. 04.09.2020 and trial would take sufficient time, therefore in present Covid-19 pandemic times, no fruitful purpose would be served in keeping the bail petitioner behind the bars any further. Co-accused in Cr.MP(M) Nos. 1739 and 1740 of 2020 have already been granted bail. The petitioner, aged 24 years is stated to be a local resident of Kuftadhar, AGPO, Bharari, District Shimla,

Himachal Pradesh, therefore, his presence can be secured in the trial. To ensure that the petitioner does not indulge in similar activities again, a strict condition is being imposed that in case he is found involved in future in any FIR under NDPS Act then this bail is liable to be cancelled. Accordingly, the present petition is allowed and petitioner is ordered to be released on bail in FIR No.234/2020, dated 04.09.2020, registered under Sections 20, 22 and 29 of the NDPS Act at Police Station Sadar, District Mandi, H.P on his furnishing personal bond in the sum of Rs.75,000/-, with one local surety in the like amount, to the satisfaction of the learned trial Court having jurisdiction over the concerned Police Station, subject to the following conditions:-

(i) Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law.

(ii) . Petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.

(iii) . Petitioner will not leave India without prior permission of the Court.

(iv) . Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v) . In case of launching of prosecutor, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vi) . Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

(vii) It is made clear that in case petitioner is arraigned as an accused, in future, in any FIR under NDPS Act, then his bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Any observation hereinabove shall not be taken as an expression on merits of the case and learned Trial Court shall decide the matter uninfluenced by any of observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.