

(2020) 12 SHI CK 0082

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.1729 Of 2020

Khadak Bahadur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20

Citation : (2020) 12 SHI CK 0082

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : B.N. Sharma, Sumesh Raj, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition, filed under Section 439 of the Criminal Procedure Code, a prayer has been made for release of the petitioner on bail, in

F.I.R. No.112 of 2019, dated 17.11.2019, registered against him at Police Station Arki, District Solan, H.P., under Section 20 of the Narcotic Drugs &

Psychotropic Substances Act, 1985 (hereinafter referred to 'ND & PS Act' for short).

2. Learned counsel for the petitioner has argued that the petitioner is innocent and he has been falsely implicated in this case. He further submits that

petitioner does not has any previous criminal history. He states that the petitioner was arrested on 17.11.2019 and since then, he is in police custody.

He further submits that though the challan was filed as far back as in the month of January, 2020, yet the proceedings have not substantially gained

momentum thereafter, as a result whereof, the petitioner is languishing in

custody. He further submits that in the event of grant of bail, the petitioner shall abide by the conditions which may be imposed upon him and he shall not jump the bail.

3. Opposing the bail petition, learned Deputy Advocate General has argued that taking in consideration the fact that the petitioner was caught red

handed in conscious possession of 740 grams of Charas, present petition be dismissed, as was also the fate of earlier application filed by the petitioner,

for the reason that not only the offence alleged against the petitioner is grievous, further as the petitioner happens to be a citizen of Nepal, there is

each and every possibility that in the event of allowing of the bail petition, he may flee the country and thus evade the trial. She has further argued that

as there is each and every possibility of the petitioner influencing the prosecution witnesses in the event of grant of bail, therefore also this bail petition

deserves to be dismissed.

4. Learned counsel for the petitioner, on instructions, states before the Court that in the event of the petitioner being released on bail, he shall not leave

the territorial jurisdiction of the State of Himachal Pradesh without the leave of the Court.

5. I have heard learned Counsel for the parties and have gone through the documents appended with the petition as well as status report, which has

been filed by the State.

6. There is on record an order dated 03.03.2020, passed by the Court of learned Special Judge-III, Solan, District Solan, H.P. in Bail Application

No.18ASJ-II/22 of 2020, titled as Khadak Bahadur Versus The State of Himachal Pradesh, vide which earlier application filed by the petitioner was

dismissed. The Court has also been informed that an earlier petitioner filed by the petitioner before this Court for grant of regular bail was withdrawn

by him. The petitioner is stated to be in custody since 17.11.2019 and as per the status report, challan was filed before learned Court below on

08.01.2020. Since then as has been pointed out by learned counsel for the petitioner, the case has not made any progress and the Court stands

informed that when the case was last listed on 20.11.2020, a date has been fixed for consideration of the charge sheet.

7. In these circumstances, keeping in view the fact that the quantity allegedly recovered from the possession of the petitioner happens to be

intermediate quantity of Charas and further the petitioner does not has any previous history of being involved in similar activities, this petition is

allowed, as no further investigation or recovery etc. is to be effected from the petitioner. Further, the statement of learned counsel for the petitioner

that petitioner shall not leave the territorial jurisdiction of the State of Himachal Pradesh before the end of the trial without the leave of learned Court

below is taken on record. The apprehension of the State that the petitioner may influence the witnesses is being taken care of by this Court by giving

liberty to the State to approach this Court for cancellation of the bail, in case petitioner flouts the bail conditions.

8. Accordingly, this petition is allowed, by ordering the release of petitioner on bail in F.I.R. No.112 of 2019, dated 17.11.2019, registered against him

at Police Station Arki, District Solan, H.P., under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985, on his furnishing personal

bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of the learned Trial Court, subject to the following conditions:-

i) Petitioner shall attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance

by filing appropriate application;

ii) He shall not tamper with the prosecution evidence;

iii) He shall not make any inducement, threat or promise to any person acquainted with the facts of the case. iv) Undertaking of the petitioner through

Counsel is taken on record that the petitioner shall not leave the territorial limits of the State of H.P. without the permission of learned Trial Court.

9. It is clarified that the findings which have been returned by this Court while deciding this petition are only for the purpose of adjudication of the

present bail application and learned trial Court shall not be influenced by any of the findings so returned by this Court in the adjudication of this petition

during the trial of the case. It is further clarified that in case the petitioner does not complies with the conditions which have been imposed upon him

while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of the bail. The petition stands disposed of in the

above terms.

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