

(2023) 06 SHI CK 0052

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1038, 1039 Of 2023

?Krishan Gopal Saini And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 23-06-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 37

Citation : (2023) 06 SHI CK 0052

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Sanjeev K. Suri, B.N. Sharma, Raj Kumar Negi, Ayushi Negi

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. Since both these petitions arise out of a common FIR, they are heard together and are being disposed of by this common order.

2. By way of instant petitions, filed under Section 439 of the Criminal Procedure Code, the petitioners are seeking bail in case F.I.R. No. 05/2023, dated 03.01.2023, registered at Police Station Sadar Una, District Una, H.P., under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

3. The prosecution story, in brief, is that on 2. 01.2023, while the police party was on routine patrolling duty at place Pir Nigaah Road and around 11:15 p.m., reached near railway crossing, they saw two persons coming from Una side and asked them as to where they were going in night, upon which, they got perplexed and started running from the spot. While running, one of them threw a polythene packet from his left pocket of jacket on the road, however, at some distance the police party managed to stop them. On suspicion, the police party associated one Gurdayal Singh and HC Sunil Kumar as witnesses in the

proceedings. The persons disclosed their names as Krishan Gopal Saini and Jaswinder Singh (petitioners herein). In presence of the aforesaid witnesses, the thrown polythene packet was checked and on opening of the said polythene packet, brown coloured solid substance was found, which was chitta/heroin. On weighment, the recovered contraband was found to be 6.70 grams. Thereafter, the police completed all the codal formalities and FIR as detailed hereinabove was registered against the accused persons and they were arrested.

4. The bail petition has been filed on the ground that the petitioners are innocent and have been falsely implicated in this case. Learned counsel for the petitioners has contended that investigation in this case is complete and nothing remains to be recovered at the instance of the petitioners, as such, the petitioners, who are in judicial custody since their arrest are required to be released on bail, as no fruitful purpose would be served by keeping them behind the bars for an unlimited period.

5. 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 petitioners, they are not entitled to be enlarged on bail. He further contended that the petitioners are habitual offenders and many cases in the past have been registered against them at different police stations, as such, they do not deserve to be released on bail.

6. 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. The perusal of the record indicates that the quantity of chitta/heroin, involved in the present case is 6.70 grams, which is an intermediate quantity. Therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case. The petitioners were arrested on 03.01.2023 and since then they are behind the bars. There is no evidence on record to suggest that the petitioners will tamper with the prosecution evidence or will flee from justice, if released on bail. Moreover, the trial may take sufficiently long time to conclude. Therefore, no fruitful purpose will be served if the petitioners are kept behind the bars for an unlimited period.

7. Learned Additional Advocate General contended that many cases in past have been registered against petitioner Krishan Gopal Saini and he is not entitled to be released on bail, as he is habitual offender. However, this contention of the learned Additional Advocate General cannot be accepted as registration of some cases in the past against petitioner Krishan Gopal Saini is no ground to deny bail to him in the present case, as guilt of the petitioner in those cases is yet to be proved and those cases will be decided by the concerned Court(s) on their own merits. In *Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh* and another, MANU/SC/0029/2012: (2012) 2 Supreme Court Cases 382, it has been held that merely on the basis of criminal antecedents, the claim of the bail cannot be rejected as it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such

as possibility of fleeing away from the jurisdiction of the Court etc. Relevant portion of the aforesaid judgment reads as under:-

"10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

8. Considering the overall facts and circumstances of the case and since the quantity of chitta/heroin involved in this case is 6.70 grams, which is an intermediate quantity, this Court finds that the present is a fit case where judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, the bail applications are allowed and it is ordered that the petitioners, who have been arrested by the police, in case F.I.R. No. 05/2023, dated 03.01.2023, registered at Police Station Sadar Una, District Una, H.P., under Sections 21 & 29 of the NDPS Act, shall be forthwith released on bail, subject to their furnishing personal bond to the tune of Rs. 50,000/- (Rupees fifty thousands) each, with one surety in the like amount each, to the satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

(i) that the petitioners will appear before the Court and the Investigating Officer whenever required ;

(ii) that they 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 they will not tamper with the prosecution evidence nor they will try to win over the Prosecution witnesses or terrorise them in any manner;

(iv) that they will not repeat the offence, as is alleged to have been committed by them.

(v) that they will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.

(vi) that they will not leave India without prior permission of the Court.

9. 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 petitioners.

10. 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.