

(2020) 01 SHI CK 0043

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 2212 Of 2019

Krishna @ Kiran

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 36(A)(4)
Indian Penal Code, 1860 — Section 201

Citation : (2020) 01 SHI CK 0043

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Kundan Kumar, Nitin Bansal, Shiv Pal Manhans, P.K. Bhatti, Amit K. Dhumal, Krishan Lal

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking her release in case FIR No. 29 of 2019, dated 06.02.2019, under Section 21 of ND&PS Act and Section 201 IPC, registered at Police Station Sadar Shimla, District Shimla, H.P.

2. The facts giving rise for registration of the above case against the petitioner can tersely be encapsulated as under:

On 05.02.2019, a police team was on patrol duty and at about 06:45 p.m. a secret tip-off was received by the police that one Seema sells drugs from her dhara (kiosk). Acting upon the secret tip-off, police associated independent witnesses and reached the dhara of said Seema. Deputy Superintendent of Police and Tehsildar also reached on the spot. Seema alongwith her daughter Pooja and Dharma (husband of Pooja) were found present in the dhara. During the search of the dhara police recovered 378 grams heroin and currency notes of Rs.

33,350/- were also recovered. Thereafter, the police completed all the codal formalities. A case under the apt Sections of ND&PS Act was registered and the investigation commenced. Police prepared the spot map and recorded the statements of the witnesses. All the accused persons were arrested and they were medically examined. During the course of investigation the accused persons disclosed that one Krishna @ Kiran (petitioner herein) had given the contraband to them for selling it. Call records of the accused persons also reveal that they were in constant touch with the petitioner. It has come in the police investigation that the petitioner was earlier also found in possession of 2 kg ganja and a case under the ND&PS Act was registered against her. Thereafter the petitioner, in order to evade her arrest, absconded, but ultimately she was nabbed. During the course of interrogation, the petitioner divulged that the phone and the SIM card, used in the commission of the offence, have been destroyed by her. On 06.07.2019 the petitioner was arrested and during the course of investigation it had come that the petitioner deals in narcotics and she is spreading the menace of drugs. There is anger in the vicinity where the petitioner lives. On 30.12.2018 the local people of the area requested the petitioner not to deal in drugs, but petitioner alongwith her relatives gave beatings to them, so a case has been registered against her. The petitioner is the main kingpin and she is spreading the menace of drugs. One of the witness, namely Tanuja, in her statement disclosed that when Pooja and Dharma were arrested she received a telephonic call from the petitioner and she told her that she will manage the bails of Pooja and Dharma. As per the police, in case the petitioner is enlarged on bail, there is possibility that she may again start selling the drugs. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner is the main kingpin and in case she is enlarged on bail, she may tamper with the prosecution evidence and may also flee from justice. The petitioner can also threaten the prosecution witnesses, through her goons. There is possibility that the petitioner, in case enlarged on bail, may abscond. Simultaneously, the prosecution is objecting the bail application on the ground that in case the petitioner is enlarged on bail, she may try to influence the witnesses and there is possible danger of justice being thwarted by granting bail to the petitioner, so the application of the petitioner may be dismissed.

3. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State, learned Counsel for the complainant and gone through the record, including the police reports, carefully.

4. The learned Counsel for the petitioner has argued that the petitioner has been implicated in a false case. He has further argued that the challan was not presented in the learned Trial Court within 180 days of her arrest. The search was conducted by the subordinate officers without informing the superior officers and after the sunset. He has further argued that the recovered contraband is not heroin as defined under the ND&PS Act. If the recovered substance is not heroin then it is not a commercial quantity, so the petition be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has

argued that the petitioner was arrested on 16th July, 2019, and the challan was presented on 3rd August, 2019, i.e., within a month of her arrest. He has further argued that the recovered substance is derivative of opium and thus a narcotic substance. He has argued that earlier also the petitioner was found in possession of huge quantity of ganja and now she has been arrested in the instant case, as she is actively involved in selling the narcotics. He has argued that complete challan has been presented in the learned Trial Court. The petitioner is the main kingpin and in case she is enlarged on bail, she may again start dealing in narcotics, she may influence the prosecution witnesses and may even flee from justice, as earlier also she evaded her arrest for considerable times, so the bail application of the petitioner be dismissed.

5. In rebuttal, the learned Counsel for the petitioner has argued that taking into consideration the fact that the investigation in the case is still going on, the fact that complete challan is to be presented in the learned Trial Court, the fact that the petitioner cannot be kept behind the bars for an unlimited period, so the petition may be allowed and the petitioner be enlarged on bail. In order to support his case he has placed reliance on the following judicial pronouncements:

1. Rehmat Ali vs. State of Himachal Pradesh, Cr.MP(M) No. 203 of 2019, decided on 08.03.2019 (H.P. High Court);
2. Shravan Kumar vs. State of NCT of Delhi, Bail Application No. 175 of 2018 (Delhi High Court);
3. Kailash Gupta vs. State, 2019(1) JCC 381 (Delhi);
4. Mohammed Fasrin vs. State, 2019(4) JCC 3968;
5. Gurpal Singh and another vs. State of Punjab, CRR 791 of 2016 (High Court of Punjab & Haryana); &
6. State of Rajasthan vs. Chagan Lal, 2014(4) JCC (Narcotics) 213.

6. It would be apt to first examine the case law, as cited by the learned Counsel for the petitioner. The facts of Rehmat Ali's case (supra) are different, as in the present case it has come in the investigation that the petitioner is the main kingpin and she runs a drug racket. As the facts of the present case are different from that of Rehmat Ali's case (supra), so this judgment is of no help to the petitioner. Likewise, the facts of the decision rendered by the Hon'ble Delhi High Court in Shravan Kumar vs. State of NCT of Delhi, are also different, as in the instant case, the petitioner is the main kingpin, so the judgment of Shravan Kumar's case is also not applicable to the present case.

7. In Kailash Gupta vs. State, 2019(1) JCC 381 (Delhi) the petitioner was the licensee of the recovered substance, whereas in the instant case the petitioner is not a licensee, so the judgment (supra) is also not applicable to the facts of the present case. The present is a case where the petitioner is the main accused and she was arrested when her involvement was found in the offence after

investigating the matter. The police found ample material against her, so the judgment rendered in Mohammed Fasrin vs. State, 2019(4) JCC 3968, is also not applicable to the facts of the present case, as the petitioner is a main kingpin in the drug racket.

8. In Gurpal Singh and another vs. State of Punjab, CRR 791 of 2016, the Hon'ble High Court of Punjab and Haryana granted bail to the petitioner on the ground that the prosecution agency in order to defeat the rights of the petitioner presented the challan within a period of 180 days without the report of chemical examiner and the prosecution did not resort to remedy available under Section 36 A(4) of the ND&PS Act, but in the instant case complete challan has been filed by the prosecution within one month from the date of arrest of the petitioner and as per the learned Additional Advocate General only the voice samples are to be compared, which does not mean that complete challan has not been presented in the learned Trial Court. As the facts of the judgment (supra) are different, so the judgment is not applicable to the present case.

9. Lastly, the judgment rendered in State of Rajasthan vs. Chagan Lal, 2014(4) JCC (Narcotics) 213, is also not applicable to the facts of the present case, as the records clearly reveals that at the time of search Deputy Superintendent of Police and Tehsildar were present on the spot and the petitioner was earlier found in possession of 2 kgs ganja. The petitioner is the main kingpin and there is ample material to proceed against her and in case she is enlarged on bail, she may threaten the prosecution witnesses and may also flee from justice, as earlier also she evaded her arrest by absconding.

10. A harmonious reading of the material available on record and the law, as highlighted above, this Court finds that the petitioner is the main kingpin of a drug racket, she was earlier also found in possession of 2 kgs ganja, she is in a position to threaten the witnesses and flee from justice, in case the petitioner, at this stage is enlarged on bail, she may again start operating in narcotics and also considering the overall facts, which have come on record, and without elaborately discussing the same at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in her favour.

11. In view of what has been discussed hereinabove, the petition, which sans merits, deserve dismissal and are accordingly dismissed. However, since the petitioner is a lady, it is expected that the learned Trial Court will make every endeavour to dispose of the matter expeditiously.

12. The views expressed hereinabove, are only confined to the present petition and shall not be construed as an opinion expressed on the merits of the main case, which shall be adjudged on its own merits.