

(2020) 06 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 705 Of 2020

Kundan Lal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-06-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 25, 29, 37
Code Of Criminal Procedure, 1973 — Section 439
Evidence Act, 1872 — Section 27, 67

Citation : (2020) 06 SHI CK 0005

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : B.L. Soni, Anil Jaswa, Manoj Bagga

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner, who is presently in custody, as an accused in FIR No.359/2019, dated 08.12.2019, registered under Section 20, 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (The Act for short) at Police Station Kullu, District Kullu, H.P., is seeking regular bail under Section 439 of the Code of Criminal Procedure.

2. I have heard learned counsel for the parties through video conference and gone through the status report filed by the respondent-State.

3. The case of the prosecution as it comes out from the status report is that:-

3(i) On 7.12.2019, a police patrolling party laid a naka at Harludhar District Kullu. At around 8.10 p.m., the patrolling party noticed a three wheeler bearing registration No. HP-05-1637, coming from Manikaran side. On being signalled to stop, it was driven rather at fast speed for about next 100 meters. Thereafter, the driver parked it by the road side before fleeing away from the spot into the forest taking advantage of the night cover. The three wheeler driver was

searched, but could not be traced. The driver of a Taxi bearing registration No. HP-01K-3432, who was already stopped by the patrolling party prior to stopping of the three wheeler and one police man were associated as independent witnesses. In their presence, the three wheeler was searched. Underneath its driver's seat, a carry bag was found containing four packets wrapped with 'kakhi' cello tape. These packets had black coloured substance. On the basis of experience of the police party, the substance was determined as Cannabis/ Charas. The substance weighed 1.466 kgm on electronic scale. Entire procedure as contemplated under the Code of Criminal Procedure as well as Narcotic Drugs and Psychotropic Substances Act was followed leading to registration of FIR in question.

3(ii) On 8.12.2019, at around 12.45 p.m., one Rajesh Kumar, who was driving the three wheeler on 7.12.2019 and who had fled away from the spot at the relevant time, was arrested for the offences under Sections 20 and 25 of the Act. Kundal Lal (petitioner) was also arrested the same day in the evening at around 5.50 p.m., from Kasol. Petitioner has been charged under Section 29 of the Act. He is in custody w.e.f. 8.12.2019.

3(iii). Rajesh Kumar the driver of the three wheeler, who had absconded from the spot at the relevant time on 7.12.2019, recorded his confessional statement under Section 27 of the Indian Evidence Act to the effect that the contraband in question was purchased by him from the petitioner (Kundal Lal). On the basis of his statement, the bail petitioner was arrested. As per the status report, during investigation, Kundal Lal (petitioner) had statedly disclosed about his cultivating cannabis/charas in Chhalal forest and extracting 1.466 kgm charas.

According to the status report, during investigation Rajesh Kumar had disclosed that he was sent to the petitioner (Kundal Lal) by one Neha. It was Neha who had settled the amount for purchase of contraband from the petitioner. Whereabouts of Neha were located, however, she could not be traced. Status report also mentions about collecting call detail reports of mobile phones of Rajesh, petitioner (Kundal Lal) and Neha, confirming that all three were involved in sale and purchase of recovered cannabis/charas. Challan was presented before learned District and Sessions Judge, Kullu, H.P., on 6.3.2020. Petitioner has been charged under Section 29 of the Act. Petitioner has been thoroughly investigated by the police. No recovery either from or at the instance of the petitioner has been effected by the police.

4. Learned counsel for the petitioner submits that contraband in question was not recovered from the possession of the petitioner much-less from his conscious possession. Petitioner has been falsely implicated with the offence alleged against him. He has been implicated only on the basis of confessional statement recorded by main accused Rajesh Kumar under Section 27 of the Indian Evidence Act. No statement under Section 67 of the Act has been recorded. The challan presented by the respondent-State does not mention any call detail reports of Neha, Rajesh and petitioner. The averments made in the status report are

improvement over the challan already presented in the Court. Neha has already been declared as proclaimed offender. Petitioner is only a suspect. No recovery is to be effected from the petitioner. The investigation in this case is complete. Challan stands already presented. It is also mentioned in the petition that the petitioner is a local resident of Village Chhalal, Post Office Kasol, Tehsil Bhuntar, District Kullu, Himachal Pradesh with no criminal history. He will abide by all the conditions, which may be imposed upon him in case of grant of bail and he will not influence the witnesses or temper with the prosecution evidence in any manner.

Learned Additional Advocate General has opposed the grant of bail of the petitioner on the ground that the petitioner was associated with the recovery of 1.466 kgm of cannabis/charas, which is a commercial quantity.

5. The petitioner has been charged for the offence under Section 29 of the Act. 1.466 kgm of cannabis/charas was recovered by the police patrolling party from the three wheeler bearing registration No. HP-05-1637, which was allegedly being driven by one Rajesh Kumar. No recovery of contraband was effected from the possession of the petitioner much less from his conscious possession. Petitioner was arrested on the basis of confessional statement recorded by main accused Rajesh Kumar under Section 27 of Indian Evidence Act. Section 25 of Indian Evidence Act states that no confession made to police officer shall be proved as against a person accused of any offence. As per the status report, the petitioner was arrested on 8.12.2019 and since then he is behind the bars. No recovery at the instance of the petitioner has been effected by the police either from the forest where he allegedly cultivated cannabis/charas or from his possession conscious or otherwise. Petitioner was implicated in the FIR in question by main accused Rajesh Kumar in his confessional statement recorded under Section 27 of the Indian Evidence Act. However, the complicity of the bail petitioner with the offence alleged against him under Section 29 of the Act is yet to be established by the prosecution in accordance with law by leading cogent evidence during trial. The rigors of Section 37 of the Act will not be attracted in this case against the petitioner, where no recovery was effected from his possession be it conscious or otherwise either before or after his arrest. Trial of the case will take considerable time. No criminal history of the petitioner has been indicated against the petitioner, who is a local resident. Therefore, no fruitful purpose would be served in keeping the bail petitioner in custody any further. Present petition is, therefore, allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.75,000/- (Rupees Seventy Five Thousand only) with one local surety in the like amount to the satisfaction of the learned trial Court/competent authority 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). 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.

The parties shall not insist upon for obtaining certified copy of this judgment and shall download the same from the website of the High Court. However, the Registry is directed to send copy of this judgment to learned counsel for the parties through email subject to furnishing email addresses by them, if so required.