

(2021) 12 SHI CK 0070

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1197 Of 2020

Lal Chand

APPELLANT

Vs

Narcotics Control Bureau (Union Of India) And Others

RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 29, 37, 60

Citation : (2021) 12 SHI CK 0070

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rajiv Rai, Ashwani Pathak, Sandeep Sharma

Final Decision : Dismissed/Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court invoking provisions of Section 439 Code of Criminal Procedure (in short 'Cr.P.C.'), seeking bail in NCB Crime No.47 of 2020, dated 26.09.2020, registered in Police Station Narcotics Control Bureau (NCB) Chandigarh, under Sections 8, 20, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Response to the petition stands filed. Petitioner has also placed on record copy of complaint submitted by NCB, filed before learned Special Judge, Bilaspur, H.P. through its Intelligence Officer.

3. On perusal of the pleadings and the record, it surfaced that on 26.09.2020 a Secret Specific Information was received by Surveillance Assistant of NCB about two persons namely Lakhan and Rahul with regard to transportation/smuggling of charas in vehicle No.HR-68B-6022 and their probable location between 2.00 p.m. and 2.30 p.m. near Police Station Swarghat. The said information was reduced into writing and was put before the Superintendent, Chandigarh Zonal Unit, who approved it at about 7.00 a.m. on 26.09.2020 and constituted a Team

of NCB Officers to intercept the aforesaid vehicle by reaching at Swarghat Chowk for search and seizure of the charas on the basis of secret information.

4. NCB Team, with independent witnesses, set up a Nakka at about 1.30 p.m. at Swarghat and at about 2.15 p.m., vehicle bearing registration No.HR-68B-6022 was noticed coming from Kullu side which was matching with description received in secret information. Therefore, vehicle was signaled to stop and after introduction by the NCB Team and independent witnesses, by showing Departmental Identity Card, three persons, occupants of the Mahindra Pickup, were asked about their introduction, who disclosed themselves as Lakhan, Rahul and Prem Pal. On disclosure of Lakhan and Rahul, search of the vehicle was conducted by NCB Team and 3.650 kilograms charas was recovered from the vehicle, which was seized by following prescribed procedure. Vehicle was taken into custody alongwith loaded Apple therein.

5. As per NCB case, during interrogation, after arrest of occupants of the vehicle, Rahul was found juvenile and Prem Pal was not found involved in commission of offence and, thus, Prem Pal was discharged. Whereas, Rahul and Lakhan were arrested and during interrogation, Lakhan had disclosed that they had procured the recovered contraband from Lal Chand alias Lallu (petitioner). Rahul had also endorsed the version of accused Lakhan in his separate revelation.

6. It is further case of NCB that on the basis of disclosure made by accused Lakhan, house of Praveen Kumar was searched and statement of accused Praveen Kumar was recorded, wherein Praveen Kumar had accepted his role in trafficking the charas with further disclosure that he had conspired with Danvir Singh alias Kaddu and Ranjeet Bhardwaj alias Buntty in trafficking of charas and Prem Pal was arrested on 27.09.2020. Whereas, Rahul was produced before Principal Magistrate, Juvenile Justice Board, Bilaspur on 28.09.2020, Lakhan and Praveen Kumar were produced before Judicial Magistrate First Class, Bilaspur, alongwith case property, inventory and relevant documents, after their medical examination. During police custody of the aforesaid accused persons, Apples impounded alongwith seized vehicle, used for trafficking of charas, being perishable items, were auctioned in open market at Bilaspur and sale proceed of the same was enclosed with the complaint.

7. On the basis of material came in the light, Ranjeet Bhardwaj during interrogation was asked by the NCB Team to join investigation, who alongwith Rajender had appeared before the NCB Investigating Team on 09.10.2020 and his statement was recorded. He has confessed his acquaintance with Danvir Singh and Praveen Kumar and according to him, Danvir Singh had asked him to bring charas from Lal Chand and for that purpose, Danvir Singh had given him `1,55,000/- on 24.09.2020 and as such Ranjeet Bhardwaj had conspired with Danvir Singh and Praveen Kumar to get charas through Lakhan in Mahindra Pickup.

8. After collecting CDR, NCB Team had found sufficient evidence to connect all

accused with each other and, therefore, on the basis of CAF/CDR, Lal Chand (petitioner) was also arrayed as respondent and notice was issued to him on 13.01.2021 to join investigation, whereupon, he appeared before the NCB Team on 25.01.2021 and confessed his role in trafficking of charas and after interrogation and statement made by petitioner Lal Chand, he was arrested on 25.01.2021 and was produced before Judicial Magistrate First Class, Bilaspur, who sent him to Judicial Lockup, Bilaspur and since then, petitioner is behind the bars. Call details of all accused persons were also obtained by the Investigating Agency and analysis of call details establishes acquaintance of accused with each other and also their involvement in transporting the charas. Relevant copies of CDR have also been placed on record.

9. Petitioner had earlier also filed bail application bearing No.31-22 of 2021, titled as Lal Chand vs. Narcotics Control Bureau, before learned Special Judge, Ghumarwin, District Bilaspur, H.P., for enlarging him on bail, which was dismissed on 07.06.2021.

10. Learned counsel for the petitioner has submitted that petitioner is a Vegetable vendor and other accused Praveen Kumar and Rahul had approached him to purchase Vegetables from him and he had provided them Apple and loaded the same in Truck/Pickup without involvement in commission of smuggling of charas. To substantiate his plea, he has placed on record some sale vouchers purporting them to be sale of Vegetables.

11. According to learned counsel for the petitioner, petitioner has been falsely implicated in the case for no material on record, rather on the basis of inadmissible evidence.

Whereas, petitioner was not involved in commission of offence in any manner and he was not having any link with the accused persons apprehended by the police alongwith charas in present case.

12. Learned counsel for the petitioner has also referred judgment passed by this Court in Cr.M.P.(M) No.1939 of 2020, titled as Nawal Kishore vs. State of H.P., decided on 06.01.2021, for enlarging the petitioner on bail as he has been involved under Section 29 of NDPS Act and in Nawal Kishore's case also, petitioner was enlarged on bail despite having been found involved in a case where recovery of charas was of commercial quantity.

13. Learned counsel for the petitioner has pointed out certain discrepancies in the claim of NCB with respect to making calls and confessions claimed to have been made in the disclosure statements and the actual time of call details and, therefore, it has been contended that veracity of prosecution case is under cloud and, therefore, petitioner deserves to be enlarged on bail.

14. Learned arguing counsel for the respondent submits that there were talks on relevant day between accused persons to arrange transportation of charas and the NCB has placed on record photocopies of CDR of Danvir Singh to Lal Chand;

Lal Chand to Danvir Singh; Danvir Singh to Ranjeet Bhardwaj; Ranjeet Bhardwaj to Danvir Singh; Ranjeet Bhardwaj to Lakhan; Lal Chand (petitioner) to Ranjeet Bhardwaj; Ranjeet Bhardwaj to Praveen Kumar; Rahul to Danvir Singh; Lal Chand to Praveen Kumar.

15. It has been canvassed by counsel for respondent-NCB that all the accused were in touch with each other on relevant day and, thus, it substantiates disclosure made by the accused during their interrogation. It has further been submitted by learned arguing counsel that petitioner has not been involved in present case merely on the basis of statement of co-accused, but NCB has established the link amongst all accused persons as evident from CDR/CAF of the accused persons.

16. Learned counsel for the respondent has also submitted that in present case, there is recovery of 3.650 kilograms of charas, which is commercial quantity and, therefore, rigors of Section 37 of NDPS Act are applicable in present case.

17. In all these vouchers, name and nature of commodity bought by the buyer have not been mentioned and these vouchers are not in respect of any sale of Vegetable to other co-accused.

18. Learned arguing counsel for respondent has submitted that in Nawal Kishore's case, 1.078 kilograms of charas was recovered and it was submitted on behalf of the petitioner therein that the said quantity is almost equivalent to 1 kilogram and, thus, case of Nawal Kishore would be falling in the category of cases related to intermediate quantity of contraband.

19. It has been contended on behalf of respondent that in Nawal Kishore's case, recovered quantity of contraband was at border line nearer to intermediate quantity, whereas, in present case, recovered quantity is 3.650 kilograms and, therefore, Lal Chand, petitioner in present case, cannot be equated with Nawal Kishore. Further that discrepancies in the statements made by the accused persons may be discrepancies, deliberately created by accused persons themselves in order to discredit the efforts put by the NCB Team for apprehending them alongwith contraband. Consideration of all these statements is subject matter of trial.

20. It has been urged on behalf of respondent that petitioner has been found involved in commission of offence which is not only destroying lives of individuals but also ruining the society and thus for recovery of huge quantity of contraband, petitioner is not entitled for bail.

21. Without going into merits of case, taking into consideration facts and circumstances of the case, quantity of recovered contraband, period of detention, impact on society and also taking note of all other factors and parameters to be taken into consideration according to the pronouncement of the Supreme Court at the time of adjudicating bail application and submissions made by learned counsel for the parties and also keeping in view the nature and gravity of the

offence, and impact on society of giving bail at this stage, I do not consider it a fit case, at this stage, to enlarge the petitioner on bail.

22. Hence, the petition is dismissed and disposed of.

23. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.