
(2015) 09 SHI CK 0089

In the High Court Of Himachal Pradesh

Case No : Criminal MP(M) No. 1290 of 2015

Man Bahadur

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 439

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 21, 22, 23, 24

Citation : (2015) 09 SHI CK 0089

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : Surinder P. Sharma, for the Appellant; M.L. Chauhan, A.A.G and J.S. Rana, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Piar Singh Rana, J—Present application is filed under Section 439 of the Code of Criminal Procedure 1973 for grant of bail in connection with FIR No. 58 of 2015 dated 11.5.2015 registered under Sections 20-61 of Narcotic Drugs and Psychotropic Substances Act 1985 at Police Station Jhakri, District Shimla Himachal Pradesh.

2. It is pleaded that applicant was arrested on the intervening night of 10th May 2015 and 11th May 2015 at 12.45 AM. It is further pleaded that applicant is in jail for a long time. It is further pleaded that the health of applicant has deteriorated. It is further pleaded that investigation in the present case is complete and challan already stood filed in the Court on 1st August 2015. It is further pleaded that applicant is living in India for more than 10 years. It is further pleaded that applicant will not abscond to Nepal. It is further pleaded that applicant will produce two responsible persons as his surety and will abide by all the terms and conditions imposed by the Court. It is further pleaded that no prejudice will be caused to the prosecution if the applicant is released on bail.

Prayer for acceptance of bail application filed under Section 439 of the Code of Criminal Procedure 1973 sought.

3. Per contra police report filed. There is recital in police report that on dated 10.5.2015 a police party headed by H.C. Suresh Kumar No. 141 along with HHC Shyam Lal No. 906, LHC Vikas Sood No. 1414 and constable Rajesh Kumar No. 910 left police station Jhakri at 11 PM vide G.D. entry No. 24(A) for routine patrol duty towards Jhakri side. There is further recital in police report that at about 12.45 AM applicant came from side of bus stand Zhakri. There is further recital in police report that applicant was moving under suspicious circumstances and was in possession of bag. There is further recital in police report that search of the applicant was conducted and 500 grams of Charas (Cannabis) was found from the bag of applicant. There is further recital in police report that investigation is complete and challan stood filed before learned trial Court on 20.7.2015. There is further recital in police report that applicant is resident of Nepal and if the applicant is released on bail then applicant will flee to Nepal and will also sale cannabis again. Prayer for rejection of bail application sought.

4. Following points arise for determination in the present bail application:

"(1) Whether bail application filed under Section 439 of the Code of Criminal Procedure 1973 is liable to be accepted as mentioned in memorandum of grounds of bail application?

(2) Final Order."

5. Court heard learned Advocate appearing on behalf of applicant and learned Additional Advocate General appearing on behalf of State and Court also perused entire record carefully.

Reason for finding upon Point No. 1.

6. Submission of learned Advocate appearing on behalf of the applicant that applicant is innocent and he has been falsely implicated in the present case cannot be decided at this stage. Same fact will be decided when case shall be decided on its merits by learned trial Court after giving due opportunity of hearing to both the parties to lead evidence in support of their case.

7. Submission of learned Advocate appearing on behalf of applicant that investigation is complete in the present case and challan already stood filed before competent Court of law and alleged recovery of charas is less than commercial quantity and on this ground bail application be allowed is accepted for the reasons hereinafter mentioned. It is well settled law that at the time of granting bail following factors should be considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. See Gurcharan Singh and Others Vs. State (Delhi Administration), AIR 1978 SC 179 : (1978) CriLJ 129 :

(1978) 1 SCC 118 : (1978) SCC(Cri) 41 : (1978) 2 SCR 358 . Also see The State Vs. Captain Jagjit Singh, AIR 1962 SC 253 : (1962) 3 SCR 622 . It was held in case reported in Sanjay Chandra Vs. CBI, AIR 2012 SC 830 : (2012) CriLJ 702 : (2011) 4 RCR(Criminal) 898 : (2011) 13 SCALE 107 : (2012) 1 SCC 40 : (2011) 6 UJ 4077 that object of bail is to secure the appearance of the accused person at his trial and it was held that object of bail is not punitive in nature. It was held that bail is rule and committal to jail is exception. It was also held that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India. It was held that it is not in the interest of justice that accused should be kept in jail for indefinite period. Keeping in view the fact that investigation is complete and keeping in view the fact that challan already stood filed in competent court of law and keeping in view the fact that trial will be concluded in due course of time and keeping in view the fact that accused is presumed to be innocent till convicted by any competent court of law Court is of the opinion that it is expedient in the ends of justice to release the applicant on bail at this stage. It is further held that if applicant is released on bail at this stage then interests of the general public or the State will not be adversely effected.

8. Submission of learned Additional Advocate General that if the applicant is released on bail he will again indulge in the business of NDPS and on this ground bail application be rejected is devoid of any force for the reason hereinafter mentioned. Court is of the opinion that conditions will be imposed in the bail order that applicant will not commit similar offence in future. If applicant will commits similar offence in future then prosecution will be at liberty to file application for cancellation of bail in accordance with law.

9. Submission of learned Additional Advocate General that if the applicant is released on bail then applicant will flee to Nepal and on this ground bail application be rejected is devoid of any force for the reason hereinafter mentioned. It is held that condition will be imposed in the bail order that applicant will not leave India without prior permission of Court. Court is of the opinion that if the applicant will flout any terms and conditions of bail order then prosecution will be at liberty to file application for cancellation of the bail in accordance with law. In view of above stated facts point No. 1 is decided in favour of applicant.

Point No. 2 (Final order).

10. In view of my findings on point No. 1 bail application filed by applicant is allowed. It is ordered that applicant will be released on bail on furnishing personal bond in the sum of Rs. 5,00,000/- (Five lacs) with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions (i) That applicant will join investigation as and when called for by the Investigating Officer in accordance with law.(ii) That applicant shall 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 such facts to

the Court or to any police officer. (iii) That applicant will not leave India without prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address to the Investigating Officer in written manner.(vi) That applicant will attend the proceedings of learned trial Court regularly till conclusion of trial. Application filed under Section 439 of the Code of Criminal Procedure 1973 disposed of. Observation made hereinabove is strictly for the purpose of deciding the present bail application and it shall not effect merits of case in any manner. All pending application(s) if any are also disposed of.