
(2022) 06 SHI CK 0051

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 368 Of 2022

Mangal Chand And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 20-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2022) 06 SHI CK 0051

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Yadwender Gupta, Bhupinder Singh Ahuja, Hemant Vaid

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court seeking regular bail under Section 439 Cr.P.C. in case FIR No. 12 of 2021, dated 5.2.2021, registered in Police Station Patlikuhal, District Kullu, H.P. under Sections 20 of Narcotic Drugs and Psychotropic Substances Act (in short "NDPS Act").

2. Status Report stands filed, wherein circumstances have been narrated in which petitioner has been arrested on 5.2.2021, for having found in possession of 1164 grams charas in a carry bag, which was thrown by him on seeing Police Officials on Haripur link road in District Kullu.

3. Learned counsel for the petitioner submits that prosecution story is highly improbable as according to prosecution story petitioner has been apprehended on a bridge when he threw carry bag which was in his hand, on seeing the Police Party, at 6:30 P.M. in the Month of February, 2021. Whereas in the month of February sun sets at about 6:00 P.M. and as per print out taken from Google Map, on 5.2.2021, time of sun set at relevant place was 5.59 P.M. It has been further stated that in the hilly area it is always dark even before ordinary official

time of sun set, as because of mountains sun rises later and sets before the time. Therefore, it has been contended that in the dark it was not possible to the petitioner to notice the Police Party coming in vehicle on the other side of the bridge and, thus, the fact claimed by the prosecution about throwing the bag on seeing the Police Party, is not true. It has been further submitted that neither Police Party was present on the spot at the time claimed in the prosecution story nor petitioner has been intercepted or apprehended at that place but in order to hide their location Police party had switched off their mobile phones as evident from the Call Details Record showing that there is no incoming or outgoing call during that period and thus it can be safely presumed that their phones were not in use since 6:00 P.M. on 5.2.2021 till next morning.

4. It has been stated that in the status report or in the challan, there is no mention of the fact that during the dark how the arrangement of light was made to conduct the proceedings on spot, which shows that proceedings were not conducted as claimed in the prosecution story.

5. It has been further claimed that in the NCB Form column Nos. 1 to 8 have been filled by Deputy Superintendent of Police SDPO, Manali, however, column Nos. 9 to 11 are blank, which are related to details of re-sealing Officer, date, time and place of deposit of contraband with MHC and information about substance. He has further submitted that there is no link between seizure of the contraband by Dy. SP Sanjeev Kumar and RC dated 7.2.2021 issued by MHC Police Station Patlikuhl with respect to dispatch of sample to the State FSL, as information in this regard is missing in the NCB Form and it reflects that alleged contraband was never deposited with the MHC and, therefore, there was no occasion for MHC to send sample of recovered contraband to State FSL and on this ground also petitioner is entitled for bail.

6. It has also been canvassed that even if prosecution case is considered to be true as it is, then also contraband allegedly recovered from the petitioner alongwith packages is 1162 grams, but without packages it was found 1144 grams, which is slightly more than commercial quantity of 1 KG and keeping in view the period of detention of the period of petitioner and also other major discrepancies regarding link evidence, petitioner deserves to be enlarged on bail at this stage.

7. Learned Additional Advocate General has submitted that for establishing link of the chain of evidence against petitioner, NCB Form is not the only document, but there is other major information and material available on record to be placed in evidence to establish the link of the petitioner with the recovered contraband and further that petitioner is involved in commission of heinous crime against the society and Nation and, therefore, for recovery of commercial quantity from him, he is not entitled for bail. He has further submitted that for not receiving any call and message during particular time in Call Details Record of Police Officials, does not establish that Police Officials have switched off their Mobile Phones and their location was somewhere else, than the location claimed

in prosecution case. Therefore, he submits that petition deserves to be dismissed.

8. Learned counsel for the petitioner has submitted that there is no previous history of petitioner in commission of same or similar nature of offence and in absence of any material on record it cannot be presumed that, if he is enlarged on bail, he shall indulge in commission of same or similar offence and, therefore, he has submitted that twin condition contained in Section 37 of NDPS Act are not existing in present case against petitioner, rather in favour of the petitioner and, therefore, he deserves to be enlarged on bail.

9. Without commenting upon merits of rival contention of parties, but taking into consideration cumulative effect of facts and circumstances placed before me coupled with factors and parameters required to be considered at the time of adjudication of bail application, as propounded by the Supreme Court and various High Courts, I am of the opinion that petitioner may be enlarged on bail at this stage.

10. Accordingly, petitioner is ordered to be enlarged on bail on furnishing personal bond in the sum of 1,00,000/- with one surety in the like amount, to the satisfaction of trial Court, within two weeks from today and upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure presence of the petitioner at the time of trial:-

(i) That the petitioner shall join the investigation and attend the Court as and when directed to do so by the Investigating Agency/Court;

(ii) that the petitioner 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that the petitioner shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial;

(viii) the petitioner shall not leave India without permission of the Court.

11. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner, enlarged on bail, as

deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

12. In case the petitioner violates any conditions imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

13. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

14. 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.

15. The parties are permitted to produce copy of order downloaded from the High Court website and trial Court shall not insist for certified copy of the order, however, he may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.