
(2023) 06 SHI CK 0039

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1245, 1246 Of 2023

Nishant Thakur And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 19-06-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 42(2), 37
Motor Vehicles Act, 1988 — Section 181
Indian Penal Code, 1860 — Section 188

Citation : (2023) 06 SHI CK 0039

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jai Dev Thakur, Rakesh Chander Negi, Seema Sharma, Sumit Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. The petitioners seek regular bail in FIR No.22/2023, dated 26.03.2023, registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and Section 181 of the Motor Vehicles Act, 1988 at Police Station Dharampur, District Solan, H.P.

2. The respondent has filed the status report and also produced the record.

3. Facts:-

3(i). As per the status report, on 26.03.2023, a police party was on patrol duty. At about 5:50 pm, a confidential information was received that a vehicle as described in the information was coming from Timber Trail Parwanoo and proceeding towards Solan. The information was also to the effect that the vehicle had three occupants carrying heroin and that search of the vehicle at that point of time could result in recovery of huge quantity of the contraband.

3(ii). Information was treated as reliable. Provisions of Section 42(2) of the

NDPS Act were complied with. Search party was duly constituted. It proceeded on the spot described in the information. On noticing the vehicle indicated in the information, the same was signalled to stop. The vehicle had three occupants. The person sitting on the driver seat disclosed his name as Ravi Sharma. The lady sitting on the adjoining seat gave her name as Priya (petitioner in Cr.MP(M) No.1246 of 2023), whereas the person occupying the back seat gave his name as Nishant Thakur (petitioner in Cr.MP(M) No.1245 of 2023). During search of the vehicle carried out in accordance with law, a plastic pouch kept in the dashboard was found, from which heroin weighing 16 grams was recovered. The recovery led to registration of the FIR and arrest of all three occupants of the vehicle.

3(iii). During investigations, co-accused Ravi Sharma disclosed that he was habitual of consuming heroin since the year 2014. He was a Taxi Driver and used to procure heroin from Chandigarh/Delhi/Manali as and when he visited these places. He is further stated to have disclosed having known the petitioners in these two bail petitions for about 3-4 years and that on 26.03.2023, he alongwith the petitioners in these petitions had gone to Manimajra in a vehicle belonging to father of the petitioner-Nishant Thakur (petitioner in Cr.MP(M) No.1245 of 2023). That he (co-accused Ravi Sharma) procured 16 grams of heroin from a person in Manimajra on paying Rs.35,000/- in cash, out of which Rs.15,000/- were contributed by the present petitioners. On their return journey to Shimla, their vehicle was intercepted by the police, which led to recovery of the contraband and registration of the FIR.

3(iv). As per the status report, the petitioners have also verified the above narration of events in the investigations carried out by the respondent from them.

According to the respondent, co-accused Ravi Sharma was taken to the spot disclosed by him for identifying the person from whom the contraband was statedly procured, however, the said person could not be identified.

4. Learned counsel for the petitioners submitted that the petitioners are behind the bars for past more than two months. Investigation in the matter is complete qua them. The charge-sheet has been filed by the respondent. The guilt, if any, of the petitioners is yet to be proved. Hence, prayer was made for enlarging the petitioners on bail. Learned counsel further stated that the petitioners will abide by all the terms and conditions, which may be imposed upon them in case of their enlargement on bail.

Learned Deputy Advocate General opposed the grant of bail and submitted that the petitioners have been accused of possessing 16 grams of heroin. The respondent has enough evidence to proceed against them. However, in case the Court is inclined to grant bail to the petitioners, then the same be made subject to stringent conditions.

5. Petitioners are co-accused in the FIR and facing allegations of possessing 16 grams of heroin. The quantity of the contraband, being intermediate, does not attract the provisions of Section 37 of the NDPS Act. The guilt, if any, of the

petitioners is yet to be proved during trial, which may take long time to conclude. There is no criminal history insofar as the co-accused Priya (petitioner in Cr.MP(M) No.1246 of 2023) is concerned. The status report gives out pendency of one FIR bearing No.39/2020, dated 18.04.2020, against co-accused Nishant Thakur (petitioner in Cr.MP(M) No.1245 of 2023), however, the same is under Section 188 of the Indian Penal Code. Both the petitioners are local residents, therefore, their presence can be secured in the trial. There is no apprehension of their fleeing from justice. They have completed more than two months in custody. The charge-sheet has been filed by the respondent on 25.05.2023. In the facts and circumstances of the case, further detention of the petitioners is not warranted. Accordingly, the present petitions are allowed. The petitioners are ordered to be released on bail in the aforesaid FIR on their furnishing personal bonds in the sum of Rs.50,000/- each with one local surety each in the like amount to the satisfaction of the learned Trial Court having jurisdiction over the concerned Police Station, subject to the following conditions:-

- (i). Petitioners are directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law.
- (ii). Petitioners shall not tamper with the evidence or hamper the investigation in any manner whatsoever.
- (iii). Petitioners will not leave India without prior permission of the Court.
- (iv). Petitioners 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). In case of launching of prosecution, petitioners shall attend the trial on every hearing, unless exempted in accordance with law.
- (vi). Petitioners shall inform the Station House Officer of the concerned police station about their places of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioners 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 petitioners are arraigned as an accused, in future, in any FIR under NDPS Act, then this 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 petitions and shall not be construed as an opinion on the merits of the matter.

Learned Trial Court shall decide the matter without being influenced by any of

the observations made hereinabove.

With the aforesaid observations, the present petitions stand disposed of, so also the pending miscellaneous application(s), if any.