

(2020) 12 SHI CK 0115

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.2154 Of 2020

Nok Singh @ Nokhu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 14-12-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 439

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

Citation : (2020) 12 SHI CK 0115

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Meera Devi, Anil Jaswal, Ram Lal Thakur

Final Decision : Dismissed

Judgement

Â Anoop Chitkara, J

1. An under-trial prisoner, in custody since 23rd July 2020, has come up before this Court under Section 439 of the Code of Criminal Procedure, 1973

(CrPC), seeking bail, under Section 20 & 29 of Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), for selling 4 kilograms and 766

grams of charas (Cannabis) to the accused Surrender Singh, who is also under incarceration.

2. The police arrested the petitioner, in FIR No. 73 of 2020, dated 13.07.2020, registered under Sections 20, 29 of the NDPS Act, in Police Station,

Banjar, District Kullu, Himachal Pradesh, disclosing cognizable and non-bailable offenses. Earlier, the petitioner had filed a petition under Section 439

CrPC before this Court. However, vide order dated 27.10.2020, the same was dismissed as withdrawn.

3. Para 10 of the petition states that the petitioner has no criminal history

relating to the offences prescribing sentence of greater than seven years of imprisonment or when on conviction, the sentence imposed was more than three years. The status report is silent about criminal history.

4. Briefly, the allegations against the petitioner are that on 13.7.2020, at around 2.00 p.m., the police of Police Station, Banzar had seized 4 kilograms

766 grams of Charas from one Surinder Singh S/o Shri Chuni Lal. After his arrest, the investigator interrogated him. During the interrogation, accused

Surinder Singh informed the investigator that on 13.7.2020, Nok Singh @ Nokhu (petitioner herein) had handed over the contraband to him. After that

the investigator got call details of the phone numbers of Surinder Singh and Nok Singh. The call details revealed that on 12.7.2020 and 13.7.2020,

number of calls were exchanged between these numbers. The investigator found one number ending with digits 251 of Surinder Singh and another

number ending with digits 300 of Mohan Lal. After that the police interrogated said Mohan Lal. He told the investigator that this SIM, from the day

one of its purchase, is being used by Nok Singh, the petitioner. The police recorded the statement of Mohan Lal and arrested Nok Singh on 23.7.2020.

5. Learned counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family, and

contends that the allegations are false and concocted.

6. While opposing the bail, the contention on behalf of the State is that the quantity involved is commercial, and restrictions of S. 37 of the NDPS Act

do not entitle the accused for bail, and the burden is on the accused to satisfy the twin conditions of S. 37 of NDPS Act, which he has failed to

establish.

7. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a

crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s)

and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused,

society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in

the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

8. The decision of this Court in *Satinder Kumar v. State of H.P.*, Cr.MP(M) No. 391 of 2020, decided on 4th Aug 2020, covers the proposition of law

involved in this case, wherein this Court has held that Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The ratio of the

decision is that to get the bail in commercial quantity of substance, the accused must meet the twin conditions of S. 37 of NDPS Act.

9. Although, the SIM ending with digits 300 was activated in the name of Mohan Lal, but the said Mohan Lal was interrogated and investigator was

convinced that Nok Singh was using the said SIM. Statement of co-accused Surinder Singh, who also implicate Nok Singh as the person, who had

handed over the charas to him, may not be admissible being given by co-accused to the police. But still the statement of Mohan Lal recorded under

Section 161 Cr.P.C., at this stage, shifts the burden upon Nok Singh. Ms. Meera Devi, learned counsel for the petitioner argued that if Nok Singh was

responsible then he could have destroyed the SIM immediately, but even, as per the investigator, the said SIM was destroyed later on. This arguments

is not sufficient to satisfy the rigors of Section 37 of NDPS Act. The burden is much more on the accused. Given the fact that the commercial

quantity of Charas under the NDPS Act is one kilogram and in the present case the recovery was more than four times than of the commercial

quantity, and the fact that the bail petition is silent about any motive for false implication, this Court has nothing to believe that the petitioner-accused is

not guilty of offence. Thus, the burden shifts on the petitioner, which at this stage, he has failed to explain.

10. Any detailed discussions about the evidence may prejudice the case of the prosecution or the accused. Suffice it to say that due to the reasons

mentioned above, and keeping in view the nature of allegations, no case for bail is made out in favour of the petitioner.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

12. Given the above reasoning, in my considered opinion, no case for bail is made out at this stage. Resultantly, the present petition stands dismissed.