

(2020) 10 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1362, 1386 Of 2020

Om Prakash And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 09-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 25, 29
Motor Vehicles Act, 1988 — Section 181

Citation : (2020) 10 SHI CK 0067

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : B.L. Soni, Aman Parth Sharma, S.C. Sharma, P.K. Bhatti, Mandeep Chandel, S.C. Sharma, P.K. Bhatti

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The petitions are taken up through video conference.
2. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in case FIR No. 376 of 2019, dated 27.12.2029, under Sections 20, 25 and 29 of the ND&PS Act and Section 181 of M.V. Act, registered in Police Station Kullu, District Kullu, H.P.
3. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. The petitioners are permanent residents of the place, so neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.
4. Police report stands filed. As per the prosecution story, which emanates from

the records, on 27.12.2019 a police team had laid a nakka at place Kotadhar. Around 01:30 p.m., vehicle, having registration No. HP34D-4317, coming from Bhutar side, was stopped for checking. On being asked, the driver could not produce the documents pertaining to the vehicle and his driving licence and he also seemed baffled. There were three occupants in the said vehicle, including the driver. The police had suspicion qua some illegal substance, so an independent witness, namely, Shri Rewat Ram, was associated and in his presence the occupants of the vehicle disclosed their names as Madan Lal (co-accused) Suresh (one of the petitioners herein) and driver divulged his name as Om Prakash (another petitioner herein). Thereafter, the police conducted search of the vehicle and recovered a pithoo (rucksack) and on being asked, co-accused Madan Lal disclosed that pithoo belongs to him. There was a carry bag kept inside the pithoo, which was stuffed with some blackish substance in the shapes of chapatias (round shape) and pellets. The recovered substance was charas and on weighment it was found to be 1.695 kgs. Thereafter, the police completed all the codal formalities. The vehicle, alongwith its key, was taken into possession. A case under the apt Section was registered and the investigation commenced. Police prepared the spot map and recorded the statements of the witnesses. All the accused persons, including the petitioners were arrested. Scientific samples of recovered contraband, on being chemically tested, found to be extract of cannabis. During the course of investigation, the petitioners revealed that co-accused Madan extracted the charas and they had intention to sell the same to tourists at Kasol. As per the police, after completion of investigation, on 13.03.2020 challan stands presented in the learned Trial Court and the case is listed on 20.11.2020. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were actively involved in the commission of the crime and they had intention to sell the huge quantity of charas to the tourists. The petitioners were illegally transporting huge quantity of charas and in case the petitioners are enlarged on bail, at this stage, they may tamper with the prosecution evidence and may also flee from justice, so the bail applications of the petitioners be dismissed.

5. I have heard the learned Senior Counsel for the petitioners, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

6. The learned Counsel for the petitioners have argued that the petitioners have been falsely implicated in the present case. They have further argued that the petitioners are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are residents of the place. It has been argued that co-accused Madan was in possession of the contraband and the petitioners are simply traveling with him. Now, the investigation is complete, challan stands presented in the learned Trial Court, nothing remains to be recovered at the instance of the petitioners and the custody of the petitioners is no more required for further interrogation. It is argued that the petitioners are behind the bars for the lost more than nine months and cannot be kept behind

the bars for an unlimited period. The petitioners are ready to abide by the terms and conditions of bail, in case granted. Lastly, it is prayed that in the wake of the facts and circumstances of the case, the bail application be allowed and the petitioner be enlarged on bail. Per contra, the learned Additional Advocate General has argued that the petitioners were found in possession of huge quantity of charas, i.e., 1.695 Kgs, which is commercial quantity and it has come in the police investigation that the petitioners were well aware that co-accused Madan had kept charas in his pithoo. He has further argued that it has also come in the police investigation that the petitioners had an intention to sell the contraband to tourists at Kasol. Lastly, he has argued that in case, at this stage, the petitioners are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail applications of the petitioners may be dismissed.

7. In rebuttal the learned Counsel for the petitioners have argued that the petitioners cannot be kept behind the bars for an unlimited period, especially when investigation is complete, challan stands presented in the learned Trial Court and in the wake of the fact that the custody of the petitioners are not at all required by the police for interrogation, so the petitions be allowed and the petitioners be enlarged on bail.

8. At this stage, considering the fact that the petitioners had knowledge that co-accused had kept charas in his pithoo, the petitioners had common intention to sell the charas to the tourists at Kasol, considering the quantity of charas, i.e., 1.695 Kgs, the active role of the petitioners in the alleged offence, the fact that in case the petitioners, at this stage, when the trial is in its initial stage, are enlarged on bail, they may tamper with the prosecution evidence or may also flee from justice and also considering all the relevant facets of the case and without discussing the same at length, this Court deems it fit that at this stage, it would not be appropriate to exercise the judicial discretion to admit the petitioners on bail in their favour.

9. In view of what has been discussed hereinabove, the petitions, which are devoid of merits, deserve dismissal and are accordingly dismissed.