

(2023) 11 SHI CK 0072

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2309 Of 2023

Pankaj Sharma

APPELLANT

Vs

Union Of India Through NCB, Chandigarh

RESPONDENT

Date of Decision : 23-11-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 23, 29, 37

Citation : (2023) 11 SHI CK 0072

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Sunil Chauhan, Ashwani Pathak, Dev Raj

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested in Crime No. 16 of 2023, dated 4.7.2023 for the commission of offences punishable under Sections 8, 21, 23 and 29 of ND&PS Act, registered at NCB CZU, Chandigarh. As per the prosecution case, recovery of 3.3 grams of Cocaine/Methaqualone was effected from a parcel on 4.7.2023. Subsequently, other parcels were found and recovery of 4.365 grams of opium, 4 vials of 10 ml. each of Psilocybin Cubensis Strain Mondo was also effected. The petitioner was arrested after the recovery of the first parcel and he is not connected with any of the parcels. The petitioner is innocent and he was falsely implicated. The petitioner would abide by all the terms and conditions which may be imposed by the Court. He is a permanent resident of Solan district and there is no chance of his absconding. Hence, the petition.

2. The petition is opposed by filing a status report. It was asserted that secret information was received by NCB on 4. 7.2023 that a parcel was sent from the U.K. to Solan. The Director General authorized the team to take the controlled delivery of the article. The NCB team checked the parcel at Solan and prepared a

panchnama. The petitioner approached the Post Office to take delivery of the parcel. NCB apprehended the petitioner and recovered 3.3 grams of Cocaine/ Methaqualone from his possession. Another registered letter was intercepted from Head Office, The Mall and 4.367 grams of cocaine was found in it. NCB conducted a search on 21.7.2023 and recovered 04 vials of 10 ml. each of Psilocybin Cubensis Strain Mondo. This substance was recovered for the first time in the region and extensive investigation is required to know the reach and effect of the drug. The test was found positive for cocaine and Methylenedioxymethamphetamine Hydrochloride (MDMA). There was no facility for testing Psilocybin Cubensis Strain Mondo and the same is being sent to CFSL after obtaining permission from the Court. The articles were sent from the United Kingdom, Germany, Netherlands and France. The case has international ramifications. The possibility of more recoveries cannot be ruled out. The parcels are being sent on fake names and addresses and are being collected by the petitioner personally. The offence is serious. Release of the petitioner on bail would affect the investigation adversely. Therefore, it was prayed that the present petition be dismissed.

3. I have heard Mr. Sunil Chauhan, learned Counsel for the petitioner and Mr. Ashwani Pathak, learned Senior Counsel, assisted by Mr. Dev Raj, Advocate for the respondent-NCB.

4. Mr. Sunil Chauhan, learned Counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. No recovery was effected from his conscious possession. The parcels were addressed to some unknown person and there is nothing on record to connect them with the present petitioner. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Ashwani Pathak, learned Senior Advocate for the respondent submitted that the NCB had waited for the person who would claim the parcels. The petitioner came to the Post Office and claimed the parcels. The offence is heinous and has international ramifications. The petitioner is to be interrogated and the destination of these parcels has to be ascertained. Hence, he prayed that the present petition be dismissed.

6. I have given considerable thought to the rival submissions at the bar and have gone through the record carefully.

7. The Hon'ble Supreme Court discussed the parameters for granting the bail in *Bhagwan Singh v. Dilip Kumar*, 2023 SCC OnLine SC 1059 as under:-

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

13. We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav* (2004) 7 SCC 528 where the parameters to be taken into consideration for the grant of bail by the Courts have been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and *Puran v. Rambilas* [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)"

8. A similar view was taken in *State of Haryana vs Dharamraj* 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010)

14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.'

9. The status report clearly mentions that NCB had taken the controlled delivery of the parcels. The petitioner claimed the parcels after making inquiries from the Postal Authorities through phone calls. He came to the post office personally as the address was fake. Therefore, there is sufficient material on record to show that the petitioner was connected with the parcels and that is why he had claimed them; otherwise, he had no justification for making the inquiries from the Postal Authorities and visiting the Post Office to collect the parcels.

10. The Police found 3.3 grams of Cocaine/Methaqualone in the first parcel, 60 grams of Cocaine in the second parcel and 56.2 grams of Methylenedioxymethamphetamine Hydrochloride (MDMA) from third parcel. These parcels had originated from different countries; therefore, there is a force in the submission of Mr Ashwani Pathak, learned Senior Advocate that the case has international ramifications. The source and destination of drugs are yet to be traced. The offence is continuing. Further 56.2 grams of MDMA is a commercial quantity and rigours of Section 37 of the ND&PS Act applies to the present case. There is nothing to show that the petitioner had not committed the offence alleged against him and the material collected so far clearly shows that the petitioner is prima facie connected with the parcels. Hence, in these circumstances, the petitioner is not entitled to bail.

Final order:

11. Consequently, the present petition fails and the same is dismissed.

12. The observation made herein before shall remain confined to the disposal of the application and will have no bearing, whatsoever, on the merits of the case.