

(2022) 03 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 296 Of 2022

Pardeep Chauhan Alia Pappu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 14-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Arms Act, 1959 — Section 25, 25(1)A, 27

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 323, 324, 341, 451, 506

Citation : (2022) 03 SHI CK 0033

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : N.S. Chandel, Vinod Gupta, Hemant Vaid

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner, invoking Section 439 of the Code of Criminal Procedure, has approached this Court for grant of bail in case FIR No.381/21, dated 28.12.2021, registered under Sections 25(1)A & 27 of the Arms Act and Section 34 of the Indian Penal Code (for short 'IPC') at Police Station Nalagarh, Police District Baddi, District Solan, Himachal Pradesh.

2. Status Report has been filed. Record has also been produced.

3. Prosecution case is that on 27.12.2021, police had laid Naka at Nasrali Pul on Nalagarh-Dabhota road. At about 10.30 p.m., a Car came at high speed from Bharatgarh side. When the Car was stopped with the help of police officials, the driver of the Car started turning the Car back in a hurry, but the Car was stopped. On inquiry, driver of the Car disclosed his name as Nishant Kumar (co-accused), whereas another passenger sitting with him, on front seat, was petitioner. During this inquiry, the police noticed an iron magazine type article

kept by the petitioner by the side of right foot, which was pulled by ASI Vijay Pal Singh and was found to be magazine of pistol. Thereafter, on searching person of petitioner, a pistol, containing five live cartridges in its magazine, was recovered. Petitioner could not produce any licence or permit relating to pistol and bullets, whereupon the pistol alongwith bullets was taken in possession and seized.

4. In aforesaid circumstances, Ruka was sent to the Police Station for registration of FIR and after registration of FIR petitioner and his co-accused were arrested.

5. During police remand of petitioner, on 29.12.2021, houses of accused persons were searched but therefrom no illegal weapon was recovered. Petitioner disclosed that he had purchased the pistol alongwith bullets, in the month of March, for a consideration of Rs.45,000/- from his friend Simran @ Simu, who was killed on 24.5.2021 near Khera by Balbir @ Balu and his companions, regarding which FIR No.147/21, dated 24.5.2021, was registered in Police Station Nalagarh and petitioner was not having knowledge wherefrom the pistol was procured by Simran @ Simu. Co-accused Nishant Kumar, during interrogation, disclosed that both of them were working together and doing business of scrap in Shiv Health Care Company, Manakpur, since last 1½ year.

6. As per Status Report, it has surfaced during investigation that petitioner has been found involved in FIR No.64/18 dated 15.3.2018, under Sections 451, 323, 506, 34 IPC; and FIR No.217/20 dated 1.9.2020, under Sections 147, 149, 341, 323 IPC, both registered in Police Station Nalagarh; and also in FIR No.94/20 dated 25.10.2020, registered in Police Station Sector-3, Chandigarh. Similarly, co-accused Nishant Kumar was also found involved in two cases, i.e. FIR No.200/15 dated 25.9.2015, under Section 324, 34 IPC, registered in Police Station Nalagarh; and FIR No.322/20 dated 23.12.2020, under Sections 323, 147, 148, 149, 506 IPC & Section 25 of Arms Act, registered at Police Station Baddi.

7. As per Status Report, challan in present case has been presented, on 9.2.2022, in the Court of learned Additional Chief Judicial Magistrate, Nalagarh.

8. Petitioner also approached learned Additional Sessions Judge, Nalagarh, by filing bail application on 21.1.2022, which was rejected on 1.2.2022 by observing that at least at that stage when case was at initial stage and challan was yet to be filed and there were many facts which were yet to be investigated and verified, it would not be proper to grant bail.

9. Learned Additional Advocate General has also submitted that as per antecedents of the petitioner, as he has been found involved in commission of offence(s) of similar nature earlier also, petitioner is not entitled for bail, as it would be a threat to the citizens of the society as petitioner is a clever person and he may threaten witnesses and may procure illegal weapon again and commit offence in future also. He has also submitted that as a preventive detention, petitioner deserves to be kept behind the bars as his release may result into lawlessness in the area.

10. Learned counsel for the petitioner has submitted that co-accused Nishant Kumar, having almost similar antecedents, has already been enlarged on bail by Additional Sessions Judge, Nalagarh, on 28.1.2022 and that the petitioner should have been treated similarly and his liberty cannot be curtailed by keeping him behind the bars without trial as punishment in a case where allegations are yet to be proved by the prosecution and further that now investigation is complete, challan has been filed after completing investigation in all respect and, therefore, it would be in the interest of justice to enlarge the petitioner on bail, as there is no apprehension that petitioner would involve in commission of offence of similar nature and there is no provision to keep a person behind the bars without trial for the sake of law and order, particularly when there is nothing on record to substantiate the same.

11. It has also been submitted by the learned counsel for the petitioner that in case of release of the petitioner on bail, the petitioner is ready to abide by any condition which shall be imposed by the Court.

12. Without commenting upon merits of rival contentions of the parties, considering the material placed before me and also parameters and factors necessary to be considered at the time of adjudication of bail application alongwith the fact that investigation is complete and challan has been presented in Court and co-accused has already been released on bail about 1½ month ago, I am of the opinion that, at this stage, the petitioner may be enlarged on bail.

13. Accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail, at this stage, subject to his furnishing personal bond in the sum of Rs.50,000/-with one surety in the like amount to the satisfaction of the trial Court, 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 the presence of petitioner/accused at the time of trial:

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

(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 he 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 he shall keep on informing about the change in address, landline

number and/or mobile number, if any, for his availability to Police and/or during trial;

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

14. 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 as deemed necessary in the facts and circumstances of the case and in the interest of justice. It shall be open for the trial Court to impose any other condition, as deemed necessary, upon the petitioner, independent of prayer of prosecution.

15. 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.

16. 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.

17. 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.

18. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, passing of order may be verified from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.