(2022) 07 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 469 Of 2022

Parma Nand Pandey APPELLANT

Vs

State Of Himachal Pradesh RESPONDENT

Date of Decision : 12-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 83, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(C), 21, 22, 29

Citation : (2022) 07 SHI CK 0017

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Anand Sharma, Y.P. Sood, Karan Sharma, Hemant Vaid

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court, invoking provisions of Section 439 Criminal Procedure Code for enlarging him on bail in case FIR No. 314 of 2021, dated 24.8.2021, registered in Police Station Una, District Una, Himachal Pradesh, under Sections 21,22,29,8(C) of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short NDPS Act) .

2. Status report stands filed. Record was also made available.

3. In the status report, details in which co-accused Satnam Singh, on the basis of trustworthy information from a reliable informer, was arrested for his involvement in business of prohibited drugs and for recovery of 3600 tablets of Lomotil and 298 tablets of Alprax 0.5.

4. As per prosecution case, on disclosure of Satnam Singh regarding source of obtaining prohibitory drugs recovered from him, Deep Medicos at Delhi was raided where petitioner Parma Nand Pandey was found to be Incharge of the shop looking after the business. During raid 100 tablets of Lomotil and 375

tablets of Alprax were recovered from the shop, but petitioner could not produce any licence/permit or record to justify his entitlement to keep and sell these prohibited drugs recovered from his shop. Batch Number of recovered drugs i.e 03L21029 of Lomotil and GDEB0002 of Alprax, was found same to the Batch Number of tablets of drugs recovered from the house of main accused Satnam Singh. For recovery of aforesaid drugs from the shop being looked after by present petitioner, he was arrested and information in this regard was given to his younger brother Dayanand Pandey.

5. During interrogation, petitioner Parma Nand Pandey disclosed that licence and other records of Deep Medical Store were with the owner of the shop Virender Singh Tokas. Despite making efforts Virender Singh Tokas could not be traced on raiding his house and other places. On inquiry from Drug Controller of Karkar Duma Delhi on 7.9.2021 report was received through e-mail stating therein that as per record available on the official licence Portal of Department, no drug license was issued, retained or renewed to Mr. Deep Medicos at Shop No. 128-S-1 Mohammadpur near R.K. Puram New Delhi, however, as per record available on the Portal, mobile of one Virender Singh Tokas was available but no licence details were uploaded for processing of application for grant or renewal/retention of their licence. It has also come in knowledge that due to fire incident on 5.7.2019, records of the Department including file of the Firm (if any) in subject, has burnt and there is no information, other than uploaded, on the official website of the Department was available and therefore, genuineness of the licence of Deep Medicos could not be ascertained or verified.

6. During investigation, counsel for the petitioner, in the Sessions Court, Una had produced two bills dated 19.7.2021, 25.8.2021 and invoice dated 19.7.2021 with respect to purchasing of Lomotil and Alprax from ‘Rama Farma’ and ‘Ronak Enterprises’ and ‘R.N. Distributors of Delhi’ for ‘Deep Medicos’. Out of these documents, only one bill dated 25.8.2021 of Ronak Enterprises contains the detail of Alprax Tablets having Batch Number GDEB0002 matching with Batch Number of Alprax recovered from house of Satnam Singh.

7. As per prosecution case Virender Singh Tokas, owner of Deep Medicos could not be traced and, therefore, Non Bailable Warrant was obtained to ensure his production on 4.10.2021. On 10.10.2021, owner of shop Virender Singh Tokas attended the Police Station with copy of lease deed and other documents related to Deep Medicos claiming that shop was rented by him to Dayanand Pandey and his brother petitioner Parmanand Pande since year 2016 and licence of Deep Medicos dated 29.4.2007, was valid up to 28.4.2012 and GST registration of the Deep Medicos was in the name of Dayanand Pandey since 1.7.2017 with the date of issue of the Registration Certificate dated 19.9.2017, and in this registration, Dayanand Pandey was stated to proprietor of the Shop.

8. It has been stated in status report that on inquiry it was found that business of the Deep Medicos was being run by Parmanand Pandey and Virender Singh rented out this shop to Parmanand Pandey, whereas Virender Singh is doing

business of Property Dealer. It was concluded by the Investigating Agency, on the basis of photocopies produced by Virender Singh that he was not involved in commission of any kind of offence and, therefore, Non Bailable Warrant issued against him was got cancelled on 22.10.2021.

9. As per status report Satnam Singh has disclosed that whenever he has purchased prohibited drugs from Deep Medicos Delhi, the same was purchased from Parmanand Pandey. It has been further stated in the report that on verification of the documents in the office of Assistant Commissioner, Department of Drugs and Trade and Taxes Vyapar Bhawan IP Estate Delhi, it was found that GST number which was in the name of Dayanand Pandey is the same GST number which has been mentioned in the bills of three medicines, which were issued by Whole Seller to Deep Medicos for supply of drugs and further the documents i.e PAN Card of Dayanand Pandey is also in the record of the aforesaid Department. Further on verification of supply of medicine with respect to bills invoices produced on behalf of petitioner in the Court, it was found that payment of all these drugs, to all above referred three Whole Sellers, was made from account bearing No. 071405500560 of Deep Medicos.

10. On further inquiry, the aforesaid account number maintained in ICICI Bank was found in the name of Dayanand Pandey which was opened on 19.10.2016 and in the account for KYC photocopies of PAN Card and Aadhar Card of Dayanand Pandey were filed.

11. Lastly, it is stated in the status report that as per available record till date, it appears that petitioner in connivance with his brother Dayanand Pandey was involved in illegal business of supplying prohibited drugs and transactions in this regard were being made from Bank Account of Dayanand Pandey further that despite making all out efforts, Dayanand Pandey is not traceable, whereas for recovery of Lomotil and Alprax during raid in Deep Medicos, kept without record/licence/permit was found in the possession of Parmanand Pandey (petitioner) and has been found involved in commission of offence under Section 21 and 22 of NDPS Act.

12. It has also been disclosed by main accused Satnam Singh that in February 2021, he has purchased prohibited drugs from Parmanand Pandey without any prescription of Doctor for consideration of Rs. 20,000/- paid to Parmanand Pandey.

13. As per CDR and Tower Location of main accused Satnam Singh, his location on 25.2.2021 is found in R.K. Puram City Delhi which has corroborated the version of Satnam Singh with respect to purchase of prohibited drugs from Parmanand Pandey.

14. It is stated that Dayanand Pandey is absconding and is not traceable despite issuance of Non Bailable Warrans and now proceedings under Section 82 and 83 Cr.P.C are being undertaken regarding Dayanand Pandey.

15. Learned counsel for the petitioner has submitted that petitioner has been involved only on the basis disclosure statement of Satnam Singh and further that actual owner of the shop is Virender Singh Tokas in whose name drug licence was issued by the concerned Authority but he managed to get GST Number of Deep Medicos in the name of brother of the petitioner and has fabricated documents regarding renting out the shop to brother of the petitioner alongwith business which is not permissible under law and very cleverly lease deed has been procured by the actual offender in order to save him and to frame the petitioner and his brother in commission of offence.

16. In alternative, it has been argued that only 100 tablets of Lomotil and 375 tablets of Alprax alleged to have been recovered from the shop in presence of present petitioner and that quantity is less than commercial quantity and petitioner is behind the Bars since August 2021 and therefore, considering his detention period and quantum unlicensed drugs recovered from him, he is entitled for bail.

17. It has been further submitted that petitioner was neither owner of shop nor licensee of shop or tenant in the shop. Therefore, he is not liable for recovery of any drugs recovered from the shop for which either Virender Singh Tokas or Dayanand Pandey may be held responsible.

18. Learned counsel for the petitioner has placed reliance upon judgments in Shokat Ali vs. State of Himachal Pradesh reported in 2020 (4) Shimla Law Cases 2332, Vikas versus State of Himachal Pradesh reported in 2021(1) Himachal Law Reporter (HC) 209, Gurmeet Singh vs. State of Himachal Pradesh reported in 2019 (3) Shimla Law Cases 1560 and Lakhwinder Singh vs. State of Himachal Pradesh & Connected Matter reported in 2021 (2) Himachal Law Reporter (HC) 1291.

19. Learned Additional Advocate General has submitted for quantity recovered from the main accused petitioner being supplier is also liable for recovery of commercial quantity of prohibited drugs in present case as he was performing active role in the business being run without licence and supply and receipt of prohibitory drugs without bills and further that Batch Number of the drugs recovered from the petitioner has matched with the Batch Number of drugs recovered from the possession of the petitioner and therefore, petitioner is not entitled for bail as he has committed an offence which is not only against individual but against the society and nation.

20. Learned counsel for the petitioner has submitted that petitioner, as evident from record, is only a helper and he is neither owner of the shop nor licensee of the shop and therefore, for recovery of prohibited drugs from the shop he is not liable to suffer. It has been further submitted that real owner of shop and business is Virender Kumar in whose favour licence was issued by the Department to run medicine shop but lateron he managed to create documents showing that he has rented the shop to Dayanand Pandey and licence has been

transferred in the name of Dayanand Pandey, whereas Dayanand Pandey and Parmanand Pandey are his servants and he is the person behind the business and for that reason only, name and style of business was continued in the same name and immediately after the raid in shop and arrest of the petitioner, Virender Kumar hide himself and was not traceable and had appeared before the Police only when police obtained Non Bailable Warrant against him and he was able to manage documents. It has been contended that in case Virender Kumar would have been innocent and was having documents which have been produced by him lateron, there was no reason for him to hide, go missing and become unavailable to the police rather he would have produced the documents at the first instance. According to learned counsel for the petitioner, Virender Kumar managed the documents and thereafter shifted the responsibility upon Dayanand Pandey and Parmanand Pandey.

21. It has also been submitted that petitioner is behind the Bars since 26.8.2021 despite the fact that only 100 tablets were recovered from the shop wherein he was serving as servant which is not a commercial quantity. Further that Batch Nos. of all medicines recovered from the main accused Satpal did not match with the Batch No. of medicine referred in invoice/bill produced by the petitioner which also indicates that main accused Satpal had not procured drugs from the petitioner but from somewhere else.

22. It has been further stated that for the reason that brother of petitioner is absconding, petitioner cannot be made to suffer by incarcerating him without trial.

23. Learned counsel for the petitioner, under instructions, has submitted that in case the petitioner is ordered to be enlarged on bail, the petitioner is ready and undertakes to furnish local surety and also undertakes to abide by all the conditions that may be imposed by the Court in order to ensure presence of the petitioner during investigation and trial.

24. Taking into consideration facts and circumstances as well as material placed before me, and also role of petitioner, but without commenting on merits of case, however considering parameters and factors necessary for consideration of bail application as propounded by the Supreme Court, I find that in present case petitioner may be enlarged on bail, at this stage.

25. Accordingly, the petition is allowed and petitioner is ordered to be released on bail, on his furnishing personal bond in the sum of Rs. 50,000/-- with one local surety in the like amount to the satisfaction of trial Court, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure presence of petitioner/ accused at the time of trial and also subject to following further conditions:-

(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 the petitioner 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 the petitioner 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) that the petitioner shall not leave India without permission of the Court.

26. 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 and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

27. 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.

28. 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.

29. Observations made in this petition hereinbefore shall not affect merits of the case in any manner and are strictly confined for the disposal of the bail application.

30. The parties are 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, it may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.