
(2021) 10 SHI CK 0056

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1421 Of 2021

Puneet Mahajan Alias Chimpu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 21 Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 21, 37, 42(2)

Citation : (2021) 10 SHI CK 0056

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Parteek Sharma, Dinesh Thakur

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court by invoking provisions of Section 439 of Cr.P.C., seeking regular bail in case FIR No. 139 of 2021, dated 3.5.2021, registered under Sections 20 and 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) in Police Station Nurpur, District Kangra, H.P.

2. Status report stands filed, stating therein that during patrolling at Bus Stand Jasoor on 3.5.2020 at about 4:35 P.M., Police party had received information from reliable sources that petitioner had been doing business of selling chita and charas to his customers and was selling at that time also. Information was reliable and confirmed and as obtaining search warrant may have cause delay leading to concealment of evidence and escape of offender, information was reduced into writing under Section 42(2) of NDPS Act and sent to SDPO, Police Station Nurpur and Police party, after associating informer, reached near gate of Subji Mandi Jasoor at about 4:45 P.M. and found a boy standing there with a belt pouch on his waist. The boy was called by name by Assistant Sub Inspector and was asked to disclose his address after showing own identity card by Assistant

Sub Inspector, whereupon boy started running towards inner side of Subji Mandi and during that process he also threw the belt pouch towards the dry drain adjacent to the road. The boy was overpowered and he was identified as petitioner. Petitioner was asked to bring the belt pouch on the road, in presence of witnesses, and on search in first packet of belt pouch Rs.48,150/-, in second pocket brown-white coloured powder in polythene envelop and seven sachet of foil paper were found in belt pouch and in third pocket nine sachet were also found in polythene envelop. Recovered contraband on weighing was found 9.8 grams Chita and 17.6 grams Charas. The same was taken in possession and seized. After registration of FIR, by sending rukka to Police Station, petitioner was arrested.

3. As per status report petitioner was found involved in commission of similar offence in year 2014, resulting into registration of FIR No. 97 of 2014, dated 25.4.2014. Lastly it is stated that challan has been prepared and presented before trial Court on 30.6.2021.

4. It is submitted on behalf of petitioner that even if case of the prosecution is admitted to be true as it is, then also the petitioner has been found in possession of quantity of contraband which, in case of heroin/chita is nearer to small quantity of 5 grams and the quantity of charas is only 17.6 grams whereas prescribed small quantity for charas is 100 grams and further that petitioner is behind the bars since 3.5.2021 and for last about six months and is, after remaining in Police custody, now in judicial custody and further that after registration of case in the year 2014, i.e. FIR No. 97 of 2014 till date petitioner has not been found indulged in commission of similar offence and further that keeping in view quantity of contraband recovered and punishment provided for that and also provisions of Section 37 of NDPS Act, petitioner is entitled for bail at this stage, particularly keeping in view the right to personal liberty granted under Section 21 of the Constitution of India and also for avoiding pre trial punishment to the petitioner. Further that petitioner is local resident of Himachal Pradesh and in case of enlarging him on bail, he is ready to abide by any condition imposed upon him

5. Learned Additional Advocate General has submitted that petitioner has been found involved in commission of offence which harmful not only to individuals, but also to the society at large and, therefore, is not entitled for bail.

6. Considering the entire facts and circumstances, particularly period of detention viz-a-viz quantity of contraband alleged to have been recovered and other factors, principles and parameters required to be considered at the time of considering the bail application, I find that at this stage, petitioner may be enlarged on bail.

7. Accordingly, petitioner is ordered to be released on bail in case FIR No. 139 of 2021, dated 3.5.2021, registered at Police Station, Nurpur, District Kangra, H.P., subject to furnishing personal bond in the sum of Rs.1,00,000/- with two sureties

in the like amount to the satisfaction of trial Court within a period of four weeks from today upon such further conditions as may be deemed fit and proper by the trial Court, including conditions enumerated hereinafter, so as to ensure the presence of the accused during 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.

8. 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.

9. 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.

10. 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.

11. 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.

14. 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, it may verify the order from the High Court website or otherwise.
The petition stands disposed of in the aforesaid terms.
Dasti copy on usual terms.