

(2023) 03 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 62 Of 2023

Puran Chand

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-03-2023

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 20, 21(c), 27AA, 28, 29, 37, 42(2)
Motor Vehicles Act, 1988 — Section 181

Citation : (2023) 03 SHI CK 0010

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rakesh Kumar, Harinder Singh Rawat

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court, invoking provisions of Section 439 of Code of Criminal Procedure (in short 'Cr.PC'), seeking regular bail in case FIR No. 371 of 2019, dated 19.12.2019, registered under Section 20 of Narcotic Drugs and Psychotropic Substances Act (in short 'NDPS Act') in Police Station Sadar Kullu, District Kullu, H.P.

2. Status report stands filed. Record has also been made available.

3. Prosecution case is that on 19.12.2019 police party received a reliable information from a faithful informer that in a red colour car, bearing registration No. HP-34C-6203 coming from Dobi Manali towards Raison Kullu, two persons namely Puran Chand and Prem Chand (petitioner) were travelling with huge quantity of contraband to supply it in other States. As per information, there was possibility of apprehending both persons by putting Nakabandi immediately. As there was possibility of occupants of car leaving the area, an information, in terms of Section 42(2) of NDPS Act, was reduced into writing and was sent to

Dy.S.P. through C. Ashok Kumar and a Naka at Raison bridge was laid. The aforesaid car was came and stopped at 12.05 AM. Due to odd hours, independent witness could not be associated despite making all out efforts and therefore police personnel were associated in search and seizure process and occupants of car were enquired about their whereabouts. Driver was Puran Chand and Prem Singh was sitting on front seat on left side. They disclosed their names and addresses and when police personnel communicated intention to check the vehicle, both of them tried to flee from spot by opening the doors of car but they were apprehended with the help of police personnel and on search of car, 5.382 Kg. charas was recovered from a carry bag kept under the seat of driver.

4. Contraband was taken in possession and seized after complying with prescribed procedure. After sending the Ruka to Police Station, FIR was registered. Investigation was carried out and Puran Chand and Prem Chand were arrested. As Puran Chand could not produce driving licence, Section 181 of Motor Vehicles Act was also added in FIR.

5. On analysis of contraband by State FSL Junga, it has been confirmed as charas.

6. Challan was presented in Court on 29.9.2020 and case is pending adjudication and list for recording of evidence of prosecution on 11.5.2023. As on date, out of total 18 witnesses, 10 witnesses have been examined and next date in trial is 11.5.2023.

7. Learned counsel for petitioner has submitted that petitioner was arrested on 20.12.2019 and he is behind the bars since last more than 3 years and 2 months and despite being an undertrial prisoner, in trial out of 18 witnesses only 10 witnesses have been examined and lastly the case was listed for recording the evidence of four witnesses on 25.2.2023 but on that day only one witness has been examined whereas no other witness was present and now four more witnesses have been summoned for 11.5.2023. It has been further submitted that there is no role of petitioner in delaying the trial and there is no likelihood of completion of trial in near future and keeping in view the pace of trial, according to him, petitioner is entitled for bail.

8. Learned counsel for the petitioner, to substantiate plea for bail, has referred pronouncement of the order dated 01.08.2022 passed by the Supreme Court in a petition for Special Leave to Appeal (Crl.) No.3961 of 2022, titled as Abdul Majeed Lone vs. Union Territory of Jammu and Kashmir, wherein petitioner facing trial for having been found in possession of 1100 grams commercial quantity of charas was enlarged on bail for suffering incarceration for over 2 years and 5 months, observing that there was no likelihood of completion of trial in near future; and order dated 12.10.2020, passed by Three Judges' Bench of the Supreme Court, in Criminal Appeal No.668 of 2020, titled as Amit Singh Moni vs. State of Himachal Pradesh, whereby petitioner therein, facing trial for recovery of

3.285 kilograms charas from a vehicle, alongwith four other persons, was enlarged on bail for having been in detention of 2 years and 7 months, as till then out of 14 witnesses, 7 witnesses were yet to be examined and last witness was examined in February 2020 and, thereafter, there was no further progress in the trial.

9. Learned counsel for the petitioner has referred pronouncement of the Supreme Court in Nitish Adhikary @ Bapan v. The State of West Bengal, Special Leave to Appeal (Crl.) No.5769 of 2022, decided on 1.8.2022, whereby the accused, under Sections 21(c) and 37 of NDPS Act, was ordered to be enlarged on bail after detention of 1 year and 7 months, observing that the trial was at a preliminary stage.

10. Learned counsel for the petitioner has also placed reliance on order dated 7.2.2020 passed by the Supreme Court in Criminal Appeal No. 245 of 2020, titled as Chitta Biswas Alias Subhas Vs. The State of West Bengal, whereby accused having found in possession of Codeine mixture above commercial quantity, was enlarged on bail after 1 year 7 months, at the stage of trial when out of 10 witnesses, 4 witnesses have been examined in the trial.

11. Reliance has also been placed on order dated 10.11.2021 passed by the Supreme Court in Special Leave to Appeal (Criminal) No. 5187 of 2021, titled as Kulwant Singh Vs. The State of Punjab, whereby accused after detention of more than 2 years, was enlarged on bail despite the fact that recovered contraband was of commercial quantity, for prayer to grant of bail was on the ground of advanced age of petitioner, period of custody undergone by him and the fact that trial would take time to conclude.

12. Learned counsel for the petitioner has also placed reliance upon order dated 7.12.2021 passed by the Supreme Court in Criminal Appeal No. 1570 of 2021, titled as Mahmood Kurdeya Vs. Narcotics Control Bureau, whereby petitioner apprehended with thousands of tablets of Tramadol X-225, was enlarged on bail. In this case, quantity of drug recovered was more than 50 Kilograms. However, in this case bail was granted by taking into consideration the fact that charge-sheet was filed on 23.9.2018 and thereafter even charges had not been framed nor trial had commenced till grant of bail to the petitioner, whereas manufacturer who sold the drug to the accused had been granted bail.

13. Learned counsel for petitioner has also relied upon order dated 5.8.2022 passed by the Supreme Court in Gopal Krishna Patra @ Gopalrusma vs. Union of India (Cr. Appeal No. 1169 of 2022), wherein accused in custody since 18.6.2020 was ordered to be enlarged on bail considering the facts and circumstances on record and length of custody undergone by him.

14. Learned counsel for petitioner has placed reliance upon judgment dated 13.1.2023 passed by this Bench in Cr.MP(M)\ No. 61 of 2023 titled Chet Ram vs. State of Himachal Pradesh wherein an accused under detention for the last 3 years and 11 months for recovery of 1.900 Kg. charas has been ordered to be

enlarged on bail.

15. Learned counsel for petitioner has placed reliance upon judgment dated 29.12.2022 passed by Coordinate Bench in Cr.MP(M) No. 2703 of 2022 titled Ram Chand vs. State of Himachal Pradesh wherein an accused under detention for the last 3 years and 11 months for recovery of 2 Kg. charas has been ordered to be enlarged on bail.

16. Learned counsel for petitioner has placed reliance upon judgment dated 22.12.2022 passed by Coordinate Bench in Cr.MP(M) No. 2521 of 2022 titled Prem Chand vs. State of Himachal Pradesh wherein an accused under detention for the last 3 years and 9 months for recovery of 2.605 Kg. charas has been ordered to be enlarged on bail.

17. Learned counsel for petitioner has placed reliance upon judgment dated 28.2.2023 passed by Coordinate Bench in Cr.MP(M) No. 349 of 2023 titled Kewal Ram vs. State of Himachal Pradesh wherein an accused under detention for the last 5 years and 4 months for recovery of 3.045 Kg. charas has been ordered to be enlarged on bail.

18. Learned counsel for petitioner has placed reliance upon judgment dated 12.12.2022 passed by this Bench in Cr.MP(M) No. 2324 of 2022 titled Rajesh Kumar vs. State of Himachal Pradesh wherein an accused under detention for the last 3 years and 5 months for recovery of 3.125 Kg. charas has been ordered to be enlarged on bail.

19. Learned counsel for petitioner has placed reliance upon judgment dated 12.1.2023 passed by Coordinate Bench in Cr.MP(M) No. 59 of 2023 titled Joseph Shobal vs. State of Himachal Pradesh and judgment dated 26.12.2022 passed by Coordinate Bench in Cr.MP(M) No. 2657 of 2022 titled Jeet Ram vs. State of Himachal Pradesh wherein an accused under detention for the last 3 years and 3-4 months for recovery of 3.382 Kg. charas have been ordered to be enlarged on bail. 20. Learned counsel for petitioner has placed reliance upon judgment dated 20.2.2023 passed by Coordinate Bench in Cr.MP(M) No. 327 of 2023 titled Surender Singh vs. State of Himachal Pradesh wherein an accused under detention for the last 2 years and 7 months for recovery of 4.76 Kg. charas has been ordered to be enlarged on bail.

21. Learned counsel for petitioner has placed reliance upon judgment dated 23.2.2023 passed by Coordinate Bench in Cr.MP(M) No. 323 of 2023 titled Tivalue @ Shiv Chand vs. State of Himachal Pradesh wherein an accused has been enlarged on bail who was under detention for the last 3 years and 4 months for recovery of 5 Kg. charas and out of 11 witnesses only 6 witnesses were examined.

22. Learned counsel for petitioner has placed reliance upon judgment dated 23.12.2022 passed by Coordinate Bench in Cr.MP(M) No. 2570 of 2022 titled Chet Ram vs. State of Himachal Pradesh; judgment dated 4.1.2023 passed by

Coordinate Bench in Cr.MP(M) No. 2836 of 2022 titled Kaul Ram vs. State of Himachal Pradesh; judgment dated 04.01.2023 passed by Coordinate Bench in Cr.MP(M) No. 2837 of 2022 titled Krishan Chand vs. State of Himachal Pradesh wherein accused under detention for the last 3 years and 1 month for recovery of 5.679 Kg. charas have been ordered to be enlarged on bail, observing as under:-

"7. The fetters placed by Section 37 of ND&PS Act, evidently have been instrumental in denial of right of bail to the petitioner in the instance case till date. The question that arises for consideration is, can the provisions of Section 37 of the Act, be construed to have same efficacy, throughout the pendency of trial, notwithstanding, the period of custody of the accused, especially, when it is weighed against his fundamental right to have expeditious disposal of trial?

8. It is submitted by learned counsel for the petitioner that till date only eight witnesses have been examined and ten more witnesses remain to be examined, despite the fact that petitioner is in custody since 20.11.2019. In the considered view of this Court, the Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&PS Act in perpetuity.

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12. In Gopal Krishna Patra @ Gopalrusma vs. Union of India (Cr. Appeal No. 1169 of 2022) decided on 05.08.2022, Hon'ble Surpeme Court has held as under:-

"The appellant is in custody since 18.06.2020 in connection with crime registered as NCB Crime No.02/2020 in respect of offences punishable under Sections 8, 20, 27-AA, 28 read with 29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

The application seeking relief of bail having been rejected, the instant appeal has been filed.

We have heard Mr.Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr.Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the fact and circumstance on record and the length of custody undergone by the appellant, in our view the case for bail is made out"

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16. Reverting to the facts of the case, the petitioner is in custody since 20.11.2019 and the facts suggest that the trial is not likely to be concluded in near future. There is nothing on record to suggest that the delay in trial is attributable to the petitioner."

23 Referring aforesaid pronouncements, learned counsel for petitioner has pleaded that petitioner is also entitled for bail on the same analogy.

24 Learned Additional Advocate General has submitted that petitioner has been found involved in commission of heinous crime of such a nature which is not only

ruining the individuals, but also damaging the families, society and Nation and therefore, petitioner is not entitled for bail.

25 Taking into consideration the entire facts and circumstances, but, without commenting on merits thereon and taking into account factors and parameters, as propounded by the Supreme Court and this Court, required to be considered at the time of adjudication of bail application, I am of the opinion that petitioner may be enlarged on bail in present case at this stage.

26 Accordingly, present petition is allowed and petitioner is directed to be enlarged on bail, subject to his furnishing personal bond in the sum of Rs. 3,00,000/- with one surety in the like amount to the satisfaction of the trial Court/Special Judge, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to assure 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 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 in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;

(viii) that the petitioner shall not leave the territory of India without prior permission; and

(ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

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 condition 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 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 the merits of the case in any manner and are strictly confined for the disposal of the bail application.

30 Petition is disposed of in aforesaid terms.

31 Copy dasti.

Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the trial Court/Special Judge, and the said Court shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.