

(2023) 05 SHI CK 0159

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 972 Of 2023

Rajat Aukta

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 26-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2023) 05 SHI CK 0159

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Mohar Singh, Sidharth Jalta

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. By way of instant petition, filed under Section 439 of the Criminal Procedure Code, the petitioner is seeking bail in case F.I.R. No. 21/2023, dated 05.03.2023, registered at Police Station Jubbal, District Shimla, H.P., under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

2. The prosecution story, in brief, is that on 05.03.2023, at around 7:30 P.M., while a police party was on routine patrolling duty and reached near place Guntu, they saw a person standing near a shop, which was closed. On seeing the police party, the person tried to run away and when police party chased him, he threw a polythene packet from his pocket. On suspicion, the police party associated Rajesh Tejta and Bhopeshwar Singh as independent witnesses in the proceedings, in whose presence, the person disclosed his name as Rajat Aukta alias Bunny. On opening of the said polythene packet, light gray coloured solid substance was recovered, which was found to be chitta/heroin. On weighment, the recovered contraband was found to be 25.40 grams. Thereafter, the police

completed all the codal formalities and FIR as detailed hereinabove was registered against the petitioner. Consequently, he was arrested.

3. Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated in this case. He has further contended that investigation in this case is almost complete and nothing remains to be recovered at the instance of the petitioner, as such, the petitioner, who is in custody since his arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner, he is not entitled to be enlarged on bail. He further contended that the petitioner is a habitual offender and one more case under the NDPS Act has been registered against him at Police Station, Rohru, District Shimla, H.P., as such, he does not deserve to be released on bail.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the case. The perusal of the record indicates that the quantity of chitta/heroin, involved in the present case is 25.40 grams, which is an intermediate quantity. Therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case.

6. The learned Additional Advocate General contended that one more case in past under the NDPS Act has been registered against the petitioner, i.e. FIR No. 150/2019, at Police Station Rohru, District Shimla, H.P. and he is not entitled to be released on bail, as he is a habitual offender. However, this contention of the learned Additional Advocate General cannot be accepted, as registration of a case in the past against the petitioner is no ground to deny bail to him in the present case, as guilt of the petitioner in the said case is yet to be proved and it shall be decided by the concerned Court on its own merits. In *Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh* and another, (2012) 2 Supreme Court Cases 382, it has been held that merely on the basis of criminal antecedents, the claim of the bail cannot be rejected as it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc. Relevant portion of the aforesaid judgment reads as under:-

"10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc."

7. In the instant case, the petitioner was arrested on 05.03.2023 and since then he is behind the bars. There is no evidence on record to suggest that the

petitioner will tamper with the prosecution evidence or will flee from justice, if released on bail. Moreover, the trial in the case is yet to commence, which may take sufficiently long time to conclude, as such, no fruitful purpose will be served if the petitioner is kept behind the bars for an unlimited period. Furthermore, co-accused Surender alias Kala has already been released on bail by this Court, as such, the petitioner also deserves to be released on bail on the ground of parity.

8. Considering the overall facts and circumstances of the case, since the quantity of chitta/heroin involved in this case is 25.40 grams, which is an intermediate quantity, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in his favour. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case F.I.R. No. 21/2023, dated 05.03.2023, registered at Police Station Jubbal, District Shimla, H.P., under Sections 21 & 29 of NDPS Act, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs. 50,000/- (Rupees fifty thousands), with one surety in the like amount to the satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

(i) that the petitioner will appear before the Court and the Investigating Officer whenever required ;

(ii) that he will 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 any facts to the Court or the police;

(iii) that he will not tamper with the prosecution evidence nor he will try to win over the Prosecution witnesses or terrorise them in any manner;

(iv) that he will not repeat the offence, as is alleged to have been committed by him.

(v) that he will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.

(vi) that he will not leave India without prior permission of the Court.

9. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioner.

10. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.