

(2021) 01 SHI CK 0178

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.2287 Of 2020

Rajeev Husain Alias Jibu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 07-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Civil Procedure, 1908 — Section 436, 46A, 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 25, 29

Citation : (2021) 01 SHI CK 0178

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : S.K.Banyal, Arvind Sharma

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Bail petitioner, namely Rajeev Husain alias Jibu, who is behind the bars for the last two years, has approached this Court in the instant proceedings

filed under Section 439 of the Code of Criminal Procedure, praying therein to grant regular bail in case FIR No.11/2019, dated 17.01.2019, under

Sections 20, 25, 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (For short "Act"), registered at police Station, Jogindernagar,

District, Mandi, Himachal Pradesh.

2. Status report prepared on the basis of the investigation carried out by the Investigating Agency, reveals that on 17.01.2019, police party present at

nakka laid near Ghatasani, stopped motorcycle bearing registration No.HP-83-5643 for checking. Pillion rider namely, Karan Sood got down from the motorcycle, whereas present bail petitioner, who allegedly at the time of

checking was allegedly driving the motorcycle ran away from the spot. Since person namely, Karan Sood got perplexed after having seen the police, police in the presence of independent witnesses effected personal search of person, namely Karan Sood as well as rucksack being carried by him and allegedly recovered 1 Kg. 121 grams of charas from his rucksack. Since, no plausible explanation came to be rendered on record with regard to aforesaid quantity of contraband, police after completion of necessary codal formalities, lodged a FIR, detailed hereinabove.

3. During investigation, above named person, Karan Sood allegedly disclosed to the police that he alongwith present bail petitioner Rajeev Husain alias Jibu had come on the motorcycle of Shami Sood. Above named person further disclosed to the police that person namely, Shami Sood had also come alongwith them in a taxi and they had purchased charas from person near Jhatingri. He disclosed to the police that present bail petitioner had checked the charas, whereafter Shami Sood purchased the same and gave it to him. Pursuant to aforesaid disclosure made by accused Karan Sood, present bail petitioner as well as Shami Sood came to be named in the FIR, detailed hereinabove and since 31.1.2019 present bail petitioner is behind the bars, whereas main accused Karan Sood, from whose conscious possession commercial quantity of contraband came to be recovered, already stands enlarged on bail pursuant to the order passed by learned Special Judge, Kangra at Dharamshala. Record reveals that prior to filing of the instant petition, petitioner had approached this Court for grant of regular bail, but such petition of him was dismissed. Now, since the bail petitioner is behind the bars for approximately two years coupled with the fact that till date prosecution has not been able to serve the accused and charge has not been framed, petitioner has approached this Court in the instant proceedings under the changed circumstances.

4. Mr. Arvind Sharma, learned Additional Advocate General while fairly acknowledging the factum with regard to filing of the challan in the competent Court of law, contends that since there is overwhelming evidence collected on record suggestive of the fact that present bail petitioner alongwith co-accused Shami Sood bought charas from person at Jhatingri and he alongwith Shami Sood after having checked the charas gave it to co-accused Karan Sood, prayer made on his behalf for grant of bail deserves

outright rejection. While fairly admitting factum with regard to grant of bail to co-accused Karan Sood, Mr. Sharma, contends that since accused Karan Sood was only used as a carrier by present bail petitioner and co-accused Shami Sood, no parity, if any, can be claimed by the petitioner placing reliance on the order granting bail in favour of accused Karan Sood. Lastly, Mr. Sharma, contends that since petitioner has committed the offence having wider impact on the society, it would be not in the interest of justice to enlarge him on bail because in the event of his being enlarged on bail, he may not only flee from justice, rather again indulge in such activities.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that on the date of alleged incident commercial quantity of contraband was recovered from the conscious possession of co-accused Karan Sood, who already stands enlarged on bail. Otherwise also, if the statement made by aforesaid co-accused is perused in its entirety, he nowhere stated that charas allegedly recovered from him was purchased by present bail petitioner, rather he disclosed to the police that charas was purchased by co-accused Shami Sood, who further handed over the same to him. Present bail petitioner has been named in the case at hand on the basis of statement made by co-accused Karan Sood, from whose conscious possession commercial quantity of charas was recovered and as such, it would be too premature to conclude complicity, if any, of the bail petitioner in the alleged crime, rather such complicity is required to be proved in accordance with law by the prosecution by leading cogent and convincing evidence.

6. Leaving everything aside, once there is no dispute that person, from whose conscious possession commercial quantity of charas was recovered stands enlarged on bail, there appears to be no justification to deny the bail to present bail petitioner, who had allegedly gone with the co-accused Karan Sood for purchasing the charas. No doubt, in the case at hand story of prosecution reveals that present bail petitioner after having seen the police fled from the spot and he was driving the motorcycle in question, but there is nothing on record suggestive of the fact that bail petitioner was seen by any person while fleeing from the spot, rather his name in the FIR came to be incorporated merely on the basis of statement of person namely, Karan Sood, who already stands enlarged on bail.

7. Though, aforesaid aspect of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence collected on record by the Investigating Agency, but having taken note of aforesaid aspect of the matter, this Court sees no reason to let bail petitioner incarcerate in jail for indefinite period, especially when co-accused stands already enlarged on bail. Bail petitioner is behind the bars for approximately two years and till date charge has been not framed and as such, there appears to be considerable force in the submissions made by learned counsel for the petitioner that conclusion of trial initiated against the bail petitioner would consume considerable time. Having taken note of prevailing condition in the country in the wake of Covid-19, this Court is of the view that trial of petitioner is likely to be delayed and as such, it would not fair to curtail his freedom for indefinite period during trial.

8. It has been repeatedly held by Honâ??ble Apex Court as well as this Court in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law. Since guilt, if any, of the bail petitioner is yet to be proved, in accordance with law, his prayer for grant of bail deserves consideration. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice or may again indulge in such activities, can be best met by putting bail petitioner to stringent conditions.

9. Recently, the Honâ??ble Apex Court in Criminal Appeal No. 227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr., decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Honâ??ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Honâ??ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be

innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with

regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences.

Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a

prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles

appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do

any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of

judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country.

Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the

circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that

person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it

necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody

after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the

satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an

accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a

factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a

first-time offender or has been accused of other offences and if so, the nature of

such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused

person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous

overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*

10. The Honâ??ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)¹ Supreme Court Cases 49; held as under:-

â?? The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is

neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an

accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after

conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of

trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody

pending trial to secure their attendance at the trial but in such cases, â?? necessityâ? is the operative test. In India , it would be quite

contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon

which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper

with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of

refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be

improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to

refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson.â??

11. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the

question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be

withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in

support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused

involved in that crime.

12. The Apex Court in Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496, has laid down the following principles to be

kept in mind, while deciding petition for bail:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

13. In view of above, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal

bonds in the sum of Rs.2.00 lakh with two local sureties in the like amount each to the satisfaction of the learned trial Court with following conditions:

(a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of

hearing and if prevented by any reason to do so, seek exemption from

appearance by filing appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from

disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender passport, if any, held by him.

14. It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon him, the investigating agency shall be free to

move this Court for cancellation of the bail.

15. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of

this application alone.

The petition stands accordingly disposed of.

Copy dasti.