
(1998) 01 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. No. 1174 of 1997

Rajiv Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-01-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 437, 439
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20

Citation : (1998) 1 ShimLC 320

Hon'ble Judges : R.L. khurana, J

Bench : Single Bench

Advocate : T.R. Chandel, Anup Chitkara and V.K. Verma, Asstt., General, for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—The Petitioner has been arrested for the offence u/s 20, Narcotic Drugs and Psychotropic Substances Act, 1985, (for short: NDPS Act) by police of Police Station Theog, on the allegations that on 15-12- 1997 during the course of his personal search 62 grams of charas was recovered from his possession. The Petitioner presently is confined to judicial custody.

2. The application for bail made by the Petitioner u/s 437, Code of Criminal Procedure, before the learned Sessions Judge, Shimla, was rejected on 19-12-1997. The Petitioner has now approached this Court for bail u/s 439, Code of Criminal Procedure.

3. The only point raised on behalf of the Petitioner is that the police officer, who had accosted the Petitioner, searched him and seized the contraband has undertaken further investigation. It was on his complaint that a formal first information report was lodged and the case against the Petitioner was initiated. It was contended that such police officer being a complainant should not have proceeded with the investigation of the case. Since the investigation was carried out by the police officer, who was the complainant, there is a suspicion with

regard to fair and impartial investigation.

4. In *Megha Singh Vs. State of Haryana*, a country made pistol was recovered from the accused and he was prosecuted for the offences under TADA, The investigation of the case was carried out by the police officer who had arrested the accused and during the course of search had recovered a pistol and cartridges from him. The F.I.R. was also registered on the complaint of such Police Officer. Thier Lordship of the apex Court disapproved the practice of investigation by the same Police Officer, who had arrested the accused and took his personal search and recovered the arm/ammunition in question, it was observed:

...We have also noted another disturbing feature in this case. PW 3, Siri Chand, head Cosntable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the assued. It was on his complaint a formal first information report was lodged and the case was initiated. He being complainant should not have proceeded with the investigation of the case. But it appears to us that he was not only the complainant in the case but he carried on with the investigation and examined witnesses u/s 161, Code of Criminal Procedure such practice; to say the least, should not be resorted to so that there may not be any occasion to suspect fair and impartial investigation.

5. The High Court of Rajasthan in *Gyan Chand Vs. The State of Rajasthan*, while dealing with a case under the NDPS Act has held that if investigation of the case is carried out by the police officer who had seized and recovered the opium, such investigation is unfair and against the basic tenets of criminal jurisprudence.

6. Following the ratio laid down by the apex Court and the High Court of Rajasthan in the above referred to case, the High Court of Punjab in *Risala v. State of Haryana* 1996 (3) Crimes 259 where the Investigation of the case was carried out by the police officer carrying out the search and seizing the contraband, had allotted bail to the accused therein.

7. In the present case as well, admittedly, the investigation of the case was carried out by the same Police Officer who had accosted the Petitioner, searched him, recovered and seized the opium from him. The case was also registered on the basis of the complaint of such police officer. Therefore, the ratio laid down in *Risala's* case (*supra*), with which I am in full agreement, applies to the present case on all fours.

Resultantly, the present petition is allowed and the Petitioner is admitted to ball on his furnishing personal bond to the tune of Rs. 10,000/- with one surety to the like amount to the satisfaction of the learned Sessions Judge, Shimla. The Petitioner shall not tamper with the evidence or hamper the investigation in any manner.

8. Be it stated that observations made above shall not be construed as an expression of opinion over the merits of the case. The question as to the effect of

the investigation by the police officer who seized the contraband will be considered by the trial Court if and when raised before it.

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