
(1998) 01 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1174 of 1997

Rajiv Kumar

APPELLANT

Vs

State of H.P.

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) 01 SHI CK 0011

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

Bench : Single Bench

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 N.D.P.S. Act) by police of Police Station Theog, on the allegation 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, had 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 vP/Slice Officer being a complainant should not have proceeded with the investigation of the case. Since the investigation was carried out by the Polite 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 offence 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. Their 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 arms/ammunition in question. It was observed:

We have also noted another disturbing feature in this case. P.W. 3, Siri Chand Head Constable arrested the accused and on search being conducted by him a pistol and the cartridges were recovered from the accused. 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 v. State of Rajasthan* 1996 Cr U 3716 (Raj), while dealing with a case under the N.D.P.S. 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 *Rasala v. State of Haryana* 1996 (3) Crimes 259 (P&H), where the investigation of the case was carried out by the Police Officer carrying out the search and seizing the contraband, had allowed 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 *Rasala's* case (*supra*), with which I am in full agreement, applies to the present case on all fours.

8. Resultantly, the present petition is allowed and the Petitioner is admitted to bail 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.

9. Be it stated that observation 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.