

(2020) 09 SHI CK 0354

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1156 Of 2020

Ram Lal @ Raju

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 21-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 164, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 29, 37
Evidence Act, 1872 — Section 25, 26

Citation : (2020) 09 SHI CK 0354

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Naresh Kaul, Nand Lal Thakur

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. An under-trial prisoner, in custody from August 2019, has come up before this Court under Section 439 of the Code of Criminal Procedure, 1973 (Cr.PC), seeking bail, under Section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), for possessing 3.934 kilograms of Charas (Cannabis).

2. The police arrested the petitioner, in FIR No.03 of 2019, dated 12.07.2019, registered under Sections 20, 29 of the NDPS Act, in Police Station SV & ACB, Mandi, District Mandi, Himachal Pradesh, disclosing cognizable and non-bailable offenses.

3. The petitioner had also filed a bail petition (being Cr.MP(M) No.2060 of 2019), earlier before this Court, which was disposed of vide order dated 5.12.2019.

4. I have read the status report(s) and heard learned counsel for the parties.

5. The gist of the Prosecution's case is that on 12th July 2019, the Inspector of Police received secret information about transportation of charas through a

Motorcycle. After that, the Investigator complied with the procedural requirements of the NDPS Act and associated independent witnesses. The Police set up a trap on the route of the bike and spotted it. The pillion rider had a bag on his lap, and he tried to throw it, but the Police were able to grab it. After that, both the riders of the bike scuffled with the Police party. On inquiry, the motorcycle driver revealed his name as Narain Dass (A-3), and the pillion rider as Hem Raj (A-2). The search of the bag led to the recovery of 3.934-kilo grams of charas. On interrogation, the Police came to know about the involvement of its seller Ram Lal alias Raju (A-1). In the meantime, when the accused were scuffling with the Police, passersby made a video recording of the incident, which became viral on social media. One Manish saw such video and informed the Police that the accused persons had also transported particular articles, including the bag containing charas, in his taxi. He recognized the accused as the persons. On this, the Police produced Manish before Learned Judicial Magistrate, where he made a statement under S. 164 CrPC, implicating the accused. The Police traced calls on 9th July 2019, between the accused Ram Lal (A-1) and Satinder, and arraigned him as an accused with the aid of S. 29 of NDPS Act.

6. The police procured the call details of these phone numbers and found that there were telephonic conversations between them. The police could not arrest Nika Ram and consequently moved an application under Section 82 CrPC for declaring him as a Proclaimed Offender.

7. As per the status report, one case was registered against the accused petitioner vide FIR No.102/17, dated 27.10.2017, under Section 18-61-85, Police Station, Padhar.

8. The learned counsel for the bail petitioner submits that he has been arraigned as an accused on the basis of confessional statement of the co-accused, which is inadmissible for the reasons that it is hit by Sections 25 & 26 of Indian Evidence Act. He further submits that the allegations of phone calls between the petitioner and another accused is bereft of any merits because the said sim was not issued in the name of the other accused. His next contention is that as per the case of the prosecution, all the accused were together, but the call details show their presence at different location.

9. On the contrary, learned Additional Advocate General submitted that the quantity involved is commercial, and restrictions of Section 37 of the NDPS Act do not entitle the accused for bail. He further contended that the burden is on the accused to satisfy the twin conditions of Section 37 of NDPS Act, which he has failed to establish.

10. The decision of this Court in Satinder Kumar v. State of H.P., Cr.MP(M) No. 391 of 2020, decided on 4th Aug 2020, covers the proposition of law involved in this case, wherein this Court has held that Satisfying the fetters of Section 37 of the NDPS Act is candling the infertile eggs. The ratio of the decision is that to get the bail in commercial quantity of substance, the accused must meet the twin

conditions of Section 37 of NDPS Act.

11. The contention that confessional statement of the co-accused is hit by Sections 25 & 26 of Indian Evidence Act, is well founded. However, the Investigator has collected other evidence against the accused-petitioner. Thus, it is to be seen that the petitioner makes out a case even qua this part and satisfies the rigors of Section 37 of NDPS Act. Qua the other submissions, suffice to say that it is matter of trial to establish that who was using the phone from which the calls were made to the petitioner. Furthermore, the location of mobile would also depend upon the mobile services being used, and because of the distance in location of some towers, there is nothing to presume that the location has to be accurate. Thus, the prosecution has established a prima facie case against the accused. Consequently, the burden shifts on the petitioner, which at this stage, he has failed to explain.

12. Section 37 of the NDPS Act implies that the accused should satisfy its twin conditions and come out clean. In the bail petition, the petitioner is silent and his only contention is that he has been falsely roped in, but does not offer any reasons for such implication. Learned Counsel offered some explanations, but it is impermissible to make such submissions in the absence of similar pleadings. Thus, the petitioner has failed to make out a case for bail.

13. Any detailed discussions about the evidence may prejudice the case of the prosecution or the accused. Suffice it to say that due to the reasons mentioned above, and keeping in view the nature of allegations, no case for bail is made out in favour of the petitioner.

14. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

Given the above reasoning, in my considered opinion, no case for bail is made out at this stage. Resultantly, the present petition stands dismissed. All pending applications, if any, stand closed.