

(2021) 05 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.249 Of 2021

Ram Lal @ Raju

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 03-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 164, 173, 173(2), 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 29, 37

Citation : (2021) 05 SHI CK 0008

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.P.C), seeking bail, under Section 20 and 29 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 mentioned as above.

3. The petitioner had earlier also filed bail petitions being Cr.MP(M) 341 of 2020, which was dismissed as withdrawn on 4.3.2020 and Cr.MP(M)

No.1156 of 2020, which was dismissed vide order dated 22.9.2020.

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), the present petitioner. 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

such person. On this, the Police produced Manish before Learned Judicial Magistrate, where he made a statement under S. 164 Cr.P.C, implicating

the accused. The Police traced calls on 9th July 2019, between the accused Ram Lal (A-1) and Satinder Kumar (A-5), and arraigned them as

accused with the aid of S. 29 of NDPS Act.

6. The police procured the call details of their 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 Cr.PC for declaring him as a Proclaimed Offender.

7. Learned counsel for the petitioner argued that the accused has been arrested in this case after the interval of more than 01 month time on the basis

of inadmissible evidence i.e alleged statement of co-accused during investigation, which is not supported by any like evidence, more so there are no

allegations/evidence of any type against the petitioner that he has participated in the commission of crime although his vehicle i.e Alto Car has been

used without his involvement. The mobile phone calls have been made just to return his vehicle as his wife was in the hospital and co-accused had

taken his vehicle to complete the transportation of alleged contraband. The case of the prosecution is that the co-accused Satinder Kumar has falsely

stated about the death of his relative and they (prosecution) have enquired about the same. It has also come in prosecution story that the wife of the

bail petitioner (Sh. Ram Lal) was under treatment in hospital (Sh. Lal Bahadur Shastri Govt. Medical College/Hospital) on 09.07.2019 & 10.7.2019

and Alto Car No. HP65-6329 of the bail petitioner was taken by the co-accused namely Devender (A- 4) and the same has been used for

transportation of the contraband, whose bail application No. CR.MP(M) No. 1607 of 2019, has already been dismissed by this Honâ??ble Court on

20.09.2019. Further, the prosecution has investigated the truth with regard to the hospitalization of the wife of the present bail petitioner (Sh. Ram

Lal),on 09.07.2019 & 10.07.2019 and also found that mobile location of the bail petitioner was at Sh. Lal Bahadur Shastri Govt. Medical

college/Hospital. It has come in investigation as well as final report filed under Section 173 Cr.P.C that his Alto Car No.HP-65-6329 admittedly has

been taken by accused Devender, when the wife of the bail petitioner i.e. Smt. Suhana Devi was suffering with severe pain and was diagnosed as

having Nabothian Cyst in Cervix largest upto 14x9 MM in length on 09.07.2019. It is important to give the meaning of Nabothian

Cyst is a lump filled with mucus on the surface of cervix, which connects vagina to uterus. CERVIX is the lowest narrow part of the uterus. The bail

petitioner required to call Devender, who had gone with his vehicle i.e. Alto Car No.HP-65-6329 to brought all the articles from his house to the

hospital and the vehicle was also required in the hospital. Thereafter, the bail petitioner had to call even even to the taxi driver Manish to take back his

wife safely to his house, which is admittedly at a distant place from the Hospital at Ner Chowk, District Mandi.

8. Mr. Naresh Kaul, learned counsel for the petitioner states that there is not an iota of evidence or reason to believe that the bail petitioner was

aware about the nefarious design of accused Devender and even the bail petitioner was not aware about the fact that his vehicle is being used for

transportation of contraband as alleged in the FIR No. 3/2019 registered at Police Station at P.S. SV & ACB Mandi, on 09.07.2019 and 10.07.2019.

The police officials have failed to investigate or to submit in their report, the fact about the condition of the wife of the petitioner, as well as her

treatment at Shri Lal Bahadur Shastri Government Medical College and Hospital Mandi at Nerchowk, District Mandi on 9.7.2019 and 10.7.2019 .The

prosecution involve the petitioner just on suspicion due to the telephone/mobile phone callâ??s made by him. There is no evidence at all that the

petitioner was aware about the illegal use of his Alto Car. It has come in prosecution story that accused Devender (A-4) has taken the Alto

Car/vehicle of petitioner Ram Lal, present petitioner to meet accused Hem Raj (A-2), Narayan Dass (A-3) and Satinder (A-5). Mere use of vehicle

and exchange of phone calls either to return the vehicle or send some other vehicle (may be of Manish), can not make him accused, who can not

cross the check-post of Sec. 37 of NDPS Act. Further, the prosecution has wrongly relied upon the statement of taxi driver Manish and given him

clean chit about non-involvement in the aforesaid transportation of contraband, despite the fact that the aforesaid Manish Kumar S/o Sh. Sant Ram

has also been put behind bars after his involvement in FIR No. 212/2020 dated 26.9.2020, registered at Police Station, Joginder Nagar under Sections

20 & 29 of the NDPS Act. Hence, his statement can not be used against the alleged accused, who is innocent.

9. Mr. Naresh Kaul, learned counsel for the petitioner states that petitioner has been falsely implicated in the present case. The petitioner has nothing

to do with the commission of the aforesaid offence and he is an innocent person. There is nothing incriminating against the petitioner in order to

connect him with the commission of the alleged offence except the mobile phone calls, which were required to be made under the given facts and

circumstances of the case. It is pertinent to mention here that petitioner is the only male member in the family and bread earner for the entire family

and he has been roped in a planned manner.

10. 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.

11. Mr. Nand Lal Thakur, learned Additional Advocate General further submitted that the petitioner did not attribute any inimical relation with any of

the police officials including those who were the members of the raiding party. He further contended that the investigation has been very fair and it is

apparent because of the non implication of the driver of the vehicle.

REASONING:

12. Report under Section 173 (2) of Cr.P.C stands filed in December, 2019. A

perusal of the status report reveals that on 10.07.2019, accused Ram Lal (A-1) had called accused Devender (A-4) on mobile phone and they had talked on various occasions. The petitioner has although offered explanation for such calls but to accept the same it would require proof by leading cogent evidence. Merely based on an affidavit by the wife of the petitioner, this Court is unable to satisfy itself that the petitioner is not guilty of the offences. Thus the conditions of Section 37 of NDPS Act have not been satisfied by the petitioner.

13. 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.