

(2020) 09 SHI CK 0449

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1658 Of 2020

Rattan Chand

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 18

Citation : (2020) 09 SHI CK 0449

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Lovneesh Thakur, Anil Jaswal

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Through present petition moved under Section 438 of the Code of Criminal Procedure, bail has been prayed in FIR No.60/2020, dated 17.04.2020, registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') at Police Station Padhar, District Mandi.

Interim protection was granted to the petitioner vide order dated 18.09.2020.

2. The prosecution case against the petitioner is that:-

2(i). On 17.04.2020 at around 10:45 am, a Police Party, while patrolling near Kutahar, noticed cultivation of opium plants amongst wheat and barley crops in certain fields. Whereafter Pradhan of Gram Panchayat as well as other villagers were requested to reach the spot. The procedure prescribed under the NDPS Act and Code of Criminal Procedure was complied with.

2(ii). The Village Revenue Officer on the basis of the revenue record, tentatively ascertained the fields in question as Khasra Nos.159, 156 and 140. A total number of 1256 opium plants were found standing over Khasra Nos.159 & 156

and 890 plants over Khasra No.140.

2(iii). On receipt of order from the Additional Superintendent of Police, Mandi, after taking the specimen, remaining opium plants were destroyed on the spot and spot memo in this regard was also prepared.

2(iv). The status report further records that State Forensic Science Laboratory, Junga has confirmed the sample of plants as that of opium.

2(v). The demarcation of the concerned area was conducted on 14.07.2020 in presence of Field Kanungo and the Village Revenue Officer, which confirmed that the opium plants were being cultivated over Khasra Nos.159 and 61.

2(vi). The petitioner is alleged to be cultivating parts of Khasra No.159, which is recorded in joint ownership and possession of various persons.

2(vii). The status report also records the fact that pursuant to the interim protection granted to the petitioner on 18.09.2020, he has joined the investigation on 20.09.2020 and is co-operating with the same.

3. Learned counsel for the petitioner raised the plea of innocence and false implication. Learned Additional Advocate General has fairly submitted that though as of now, custodial interrogation of the petitioner is not required, however, the petitioner be directed to continue to join and co-operate with the investigating agency.

4. In view of the above stand, coupled with the facts that the land in question is said to be jointly owned & possessed by various persons including the petitioner and the petitioner being resident of Village Kutahar, Tehsil Sadar, District Mandi, HP, therefore, his presence can be ensured in the trial, the instant petition is allowed. The interim protection granted to the petitioner vide order dated 18.09.2020 is made absolute subject to following conditions:-

(i). The petitioner shall join and cooperate the investigation of the case as and when called for by the Investigating Officer in accordance with law.

(ii). The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.

(iii). The petitioner will not leave India without prior permission of the Court.

(iv). The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v). In case the petitioner is put to trial, then he shall attend the trial on every hearing, unless exempted in accordance with law.

(vi) . Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same

shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

(vii). It is made clear that in case the petitioner is arraigned as an accused in future, in any FIR under NDPS Act, then this bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard.

It is made clear that in case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is also clarified that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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