

(2023) 05 SHI CK 0142

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1155 Of 2023

Roshan Thakur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 42(2)

Citation : (2023) 05 SHI CK 0142

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : T.K.Verma, Raj Kumar Negi

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. Petitioner by way of instant petition has prayed for grant of bail under Section 439 Cr.P.C. in case registered vide FIR No.170 of 2022, dated 23.11.2022, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'ND&PS Act), at Police Station, Dhalli, District Shimla, H.P.

2. Petitioner was arrested on 23.11.2022 and is in custody since then. Report under Section 173 Cr.P.C. stands filed in the Court.

3. The case against the petitioner is that on 23.11.2022, a routine police patrol near Kufri, received a secret and credible information to the effect that a person bearing shirt with checks and grey pant and having a backpack was involved in selling "Charas" to consumers near Kufri bye-pass. Report under Section 42 (2) of the ND&PS Act was prepared and sent to the office of Additional Superintendent of Police, through Constable Vikrant Singh. Independent witnesses were associated. A person was found near liquor vend at Kufri. When police party signaled him to stop, he started running towards Fagu but was overpowered by the police party. He disclosed his name as Roshan Thakur

(petitioner). The backpack carried by petitioner was searched on suspicion. 514 grams of Charas was recovered from the bag. The case was registered and petitioner was arrested. In addition, currency notes worth Rs.4570/- were also recovered. Report submitted by the Forensic Science Laboratory, has also opined the substance recovered from the bag of petitioner to be extract of cannabis and sample of Charas.

4. In its status report, respondent has submitted that the report under Section 173 Cr.P.C. stands filed in the Court on 19.01.2023 and the next date is fixed as 27.6.2023 in the Court of learned Additional Sessions Judge (I) (Special Judge), Shimla.

5. Learned counsel for the petitioner contended that the petitioner has been falsely implicated in the case. He is not involved in any offence. In the past also, petitioner has not been found involved in any other offence. The investigation is complete and no fruitful purpose shall be served by detaining the petitioner in custody for indeterminate period.

6. On the other, learned Additional Advocate General has opposed the prayer. It is submitted that the gravity of offence committed by petitioner cannot be undermined only for the reason that the quantity of contraband recovered from the petitioner is less than commercial quantity. He has further contended that the petitioner was found indulging in sale of Charas, that too, in broad day light, which reflects the respect which the petitioner holds for law.

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. The notification specifying the small and commercial quantity of Narcotic Drugs and Psychotropic Substances, issued by the Government of India, notifies the quantity of Charas between 100 grams to 1 kg as intermediate quantity. The offence is punishable under Section 20 of the Act. The punishment provided for the offence in question is rigorous imprisonment extending upto 10 years with fine extending upto Rs.1,00,000/-. The offence allegedly committed by petitioner no doubt is a serious offence and if proved, may entail severe punishment. The record made available to this Court reveals existence of prima-facie material against the petitioner.

9. 514 grams of Charas cannot be said to be a quantity which might have been kept by petitioner in his possession for any other purpose than for commercial use. The drug menace has already affected the societal interest adversely. The worst sufferers have been vulnerable adolescents. In addition to a serious law and order problem, the drug abuse has become serious hazard to social and economic development.

10. The plea raised on behalf of the petitioner that he has already suffered custody for about six months, cannot come to his rescue at this stage. It is evident that the investigating agency has not unduly delayed the presentation of

report under Section 173 Cr.P.C. after the conclusion of investigation. It is also not suggestive from the facts that the trial of the petitioner is also being unduly delayed. The trial is likely to take reasonable time before conclusion and it cannot be presumed that petitioner will be incarcerated for indeterminate period before conclusion of trial. At this stage, there is no material on record to suggest any prejudice being caused to petitioner due to delay, if any, in trial.

11. Petitioner also does not have any permanent abode. He has been stated to be a resident of Village Kufri, where he has taken some accommodation on rent. The trial is at initial stage; the material witnesses are to be examined. In case of release of petitioner on bail at this stage, may afford the petitioner opportunity to abscond from the course of justice and he may also try to influence the prosecution witnesses.

12. In the given facts, petitioner is not entitled to grant of bail at this stage. Accordingly, the petition is dismissed.

13. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.