

(2023) 02 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 218 Of 2023

Satyam Panchal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 37

Citation : (2023) 02 SHI CK 0018

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Harsh, Manoj Pathak, Vishal Panwar, Rajat Chauhan

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. By way of instant petition, filed under Section 439 of the Criminal Procedure Code, the petitioner is seeking bail in case F.I.R. No. 158/2022, dated 16.12.2022, registered at Police Station Theog, District Shimla, H.P., under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as "NDPS Act").

2. The prosecution story, in brief, is that on 16. 12.2022, while police party was on patrolling duty and around 3:10 p.m., reached near place Jagedi, they received an information that one Wagon-R, bearing registration No. DL-8C-6599, is parked on the road near Five Star Hotel at Nangal Devi, in which, there are three persons, who have chitta/heroin with them. Accordingly, the police associated one Ramesh as an independent witness in the proceedings and reached the aforesaid place, where they saw a car parked on the road, in which there were three persons sitting. On asking, the person sitting on the driver seat of the vehicle disclosed his name as Praveen and the person sitting on the co-driver seat disclosed his name as Karan Sharma, whereas the person sitting on

the rear seat of the vehicle disclosed his name as Saytam Panchal (petitioner herein). During search of the vehicle, near gear box one transparent polythene packet was found. On opening of the said polythene packet, some solid light gray coloured substance was found. When the said substance was checked with the help of Kit, it was found to be chitta/heroin. On weighment, it was found to be 76.51 grams. Thereafter, the police completed all the codal formalities and FIR as detailed hereinabove has been registered against the accused persons. Consequently, the accused persons were arrested.

3. Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated in this case. He has further contended that investigation in this case is complete and nothing remains to be recovered at the instance of the petitioner and as such, the petitioner, who is only 20 years old boy and is in custody since his arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner, he is not entitled to be enlarged on bail.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the case and I am of the firm opinion that the petitioner has made out a case for grant of bail, as a perusal of the record indicates that the petitioner has been arrested for possessing 76.51 grams of chitta/heroin, which is an intermediate quantity. Therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case. The petitioner was arrested on 16.12.2022 and since then he is behind the bars. There is no evidence on record to suggest that the petitioner will tamper with the prosecution evidence or will flee from justice, if released on bail. Moreover, the investigation is almost complete and the trial may take sufficiently long time to conclude. Therefore, no fruitful purpose will be served if the petitioner, who is only 20 years of age, is kept behind the bars for an unlimited period.

6. Considering the overall facts and circumstances of the case and since the quantity of chitta/heroin involved in this case is an intermediate quantity, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case F.I.R. No. 158/2022, dated 16.12.2022, registered at Police Station Theog, District Shimla, H.P., under Sections 21 & 29 of NDPS Act, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs. 50,000/- (Rupees fifty thousands), with one surety in the like amount to the satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

(i) that the petitioner will appear before the Court and the Investigating Officer

whenever required ;

(ii) that he will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing any facts to the Court or the police;

(iii) that he will not tamper with the prosecution evidence nor he will try to win over the Prosecution witnesses or terrorise them in any manner;

(iv) that he will not repeat the offence, as is alleged to have been committed by him.

(v) that he will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.

(vi) that he will not leave India without prior permission of the Court.

7. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioner.

8. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.