
(2020) 08 SHI CK 0120

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1108 Of 2020

Shanta Pun

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21

Citation : (2020) 08 SHI CK 0120

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : C.S. Thakur, S.C. Sharma, P.K. Bhatti, Kamal Kishore

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The matter is taken up through video conference.
2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 72 of 2019, dated 17.09.2019, under Section 21 of the ND&PS Act, registered in Police Station Kandaghat, District Solan, H.P.
3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.
4. Police report stands filed. As per the prosecution story, on 17.09.2019 a police team was on patrol duty. At about 08:55 p.m., when the police

personnel were standing near Akon Blue Restaurant, they spotted a person coming. The said person was carrying a bag and on seeing police party, he turned back and started running. On suspicion, he was chased and nabbed. The nabbed person was looking baffled, so, on suspicion, police associated a passerby as an independent witness and in his presence the said person disclosed his name as Shanta Pun (petitioner herein). Thereafter, the bag of the petitioner was checked and a pouch was recovered, which was stuffed with some brownish substance. In addition to the brownish substance, police also recovered a weighing machine and currency notes amounting to Rs. 15,000/-. The said recovered brownish substance was found to be heroin and the same was weighed alongwith the plastic pouch and found to be 13.98 grams. Thereafter, the police completed all the codal formalities. Police made the relevant recoveries, prepared the spot map and recorded the statements of the witnesses. The petitioner was arrested. As per the police, after completion of investigation challan was presented in the learned Trial Court on 16.11.2019 and now the case is listed for prosecution evidence on 29.08.2020. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was involved in a serious offence, he is dealing in narcotics and there is every possibility that in case at this stage he is enlarged on bail, he may flee from justice, as he is resident of Nepal or tamper with the prosecution witnesses.

5. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, nothing is to be recovered from the petitioner, his custody is not at all required by the police and the challan stands presented in the learned Trial Court, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence. He has further argued that in case the petitioner is

enlarged on bail, at this stage, he may flee from justice, as he is a foreign national or there is possibility that he may tamper with the prosecution evidence. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is behind the bars for the last 10-11 months and he cannot be kept behind the bars for an unlimited period, especially when investigation is complete, challan stands presented in the learned Trial Court and the custody of the petitioner is not at all required by the police, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the fact that the petitioner is behind the bars for last more than ten months and he cannot be kept behind the bars for an unlimited period, investigation in the matter is completed, nothing remains to be recovered at the instance of the petitioner, challan has also been

presented before the learned Trial Court, custody of the petitioner is not at all required by the police, considering the quantity of the recovered

contraband, the fact that the petitioner is ready and willing to abide by the terms and conditions of bail, in case granted, he is neither in a position to

tamper with the prosecution evidence nor in a position to flee from justice, considering the overall material, which has come on record, and without

discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to

be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police in case FIR

No. 72 of 2019, dated 17.09.2019, under Section 21 of the ND&PS Act, registered in Police Station Kandaghat, District Solan, H.P., shall be released

on bail forthwith in this case, subject to his furnishing personal bond in the sum of ` 50,000/- (rupees fifty thousand) with one surety in the like amount

to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

(i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.

(ii) That the petitioner will not leave India without prior permission of the Court.

(iii) That the petitioner 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 such facts to the Investigating Officer or Court.

9. In view of the above, the petition is disposed of. Copy dasti.