

(2014) 03 SHI CK 0035
In the High Court Of Himachal Pradesh
Case No : Cr. M.P. (M) No. 285 of 2014

Shashi Khanna

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Forest Act, 1927 — Section 41, 42
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 29
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (2014) 2 ShimLC 784

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : B.M. Chauhan, Advocate for the Appellant; Virender Kumar Verma and Minakshi Sharma, Additional Advocate Generals and Parul Negi, Deputy Advocate General and Party-in-Person, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—This petition u/s 439 Cr.P.C. for grant of regular bail in case FIR No. 55 of 2014 dated 21.2.2014 registered at Police Station, Kullu, District Kullu, H.P. under Sections 41, 42 of the Indian Forest Act, Sections 379, 34 IPC and Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act has been filed by the petitioner on the ground that she is an innocent lady and has been falsely implicated in "the case merely on the ground of suspicion. In fact, it is a specific case that she has been arrested only on the ground that one of the accused Gagan Kumar happens to be her son. It is specific case that Gagan Kumar alongwith his family members is residing separately from her and is having a separate ration card and is not even shown as member of her family in the Parivar Register. From the police report submitted in the Court, it appears that on 21.2.2014 at about 7.30 p.m., ASI Tek Chand along with other police officials was going to Mohal side in the official vehicle No. HP-34A-0049. The police party noticed Car bearing registration No. HP-66-3653

parked on the road side with its driver sitting in the vehicle. Another Car (Alto) bearing registration No. HP-34A-7092 was also parked, From the Alto Car, three persons were taking out gunny bags which made the police party suspicious. Accordingly, the police party went to the spot, upon which one person ran away and the other persons including Gagan were apprehended. During the search in all 13 gunny bags full of walnut-bark weighing 338 Kg. were recovered from the Alto Car, which were taken into possession alongwith the vehicles by the police. The further case of the prosecution is that thereafter on 21.2.2014 itself, upon the disclosure statement of the accused Gagan Kumar, 36 more gunny bags of walnut-bark weighing 9.41 Qtl. were recovered. Apart from this, another gunny bag was recovered which contained 7 Kg. of Charas. On the basis of such recovery, aforesaid FIR came to be registered initially against Gagan Kumar.

2. The further case of the prosecution is that during the search of the house/shop of the accused Gagan Kumar, it revealed that he was not owner of the house/shop and claimed himself to be the tenant of the petitioner but he could not produce any document of tenancy.

3. Though, the aforesaid incident is reported to have taken place on 21.2.2014, the petitioner came to be arrested after 15 days of the incident on 4.3.2014 on the ground that it was the petitioner who was in fact the owner of the premises from where the contraband is alleged to have been recovered.

4. I have heard learned Counsel for the petitioner and learned Additional Advocate General for the State and perused the records of FIR No. 55 of 2014.

5. The learned Additional Advocate General has strenuously and vigorously argued that a serious offence has been committed by the petitioner which involves a huge haul of contraband i.e. 7 Kg. of Charas and, therefore, the petitioner irrespective of her gender or age, deserves no leniency. On the other hand, Mr. B.M. Chauhan, learned Counsel for the petitioner has reiterated his submission that the petitioner is an innocent lady and has been falsely implicated in the case and that too on the ground of suspicion alone or else there is no material on record whereby the petitioner can be termed to have committed any offence in the present case. The learned Counsel for the petitioner has reiterated the fact that the accused Gagan Kumar though is her son but he is residing separately with his own family and is having a separate ration card and has also not been reflected as a family member of the Panchayat Register pertaining to the family of the petitioner.

6. At this stage, what emerges is as to why the petitioner who was admittedly present at the place i.e. house/shop was not arrested on 21.2.2014 in case she was in any manner connected with the commission of offence. Merely because subsequently the record reflects the petitioner to be the owner of the premises cannot afford a ground to implicate the petitioner in such a manner that too on suspicion alone.

7. It would not be appropriate for me at this stage to comment upon the merits

of the case of the prosecution. Suffice it to say that the petitioner is a permanent resident of Dhalpur and is currently aged about 70 years having roots in the society and there is remote chance of her fleeing from justice. I think that this is a fit case where the petitioner should be granted bail and accordingly, the present bail petition is allowed and the petitioner is ordered to be released on bail in FIR No. 55 of 2014 dated 21.2.2014 registered at Police Station, Kullu, District Kullu, H.P. under Sections 41, 42 of the Indian Forest Act, Sections 379, 34 IPC and Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act, on her furnishing personal bond in the sum of Rs. 1,00,000/- with one surety of the like amount to the satisfaction of the Chief Judicial Magistrate, Kullu, District Kullu, with the following conditions: (i) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or to any police officer;

(ii) that the petitioner shall not tamper with the prosecution evidence or threaten the witnesses;

(iii) that the petitioner shall make herself available for interrogation by the police officer as and when and if required.

(iv) that the petitioner shall not misuse her liberty in any manner.

Learned Chief Judicial Magistrate, Kullu, is directed to comply with the directions issued by the High Court, vide communication No. HHC.VIG/Misc. Instructions/93-IV. 7139 dated 18.3.2013,

Any observation made hereinabove 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. Petition stands disposed of.