

(2022) 01 SHI CK 0057

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 150 Of 2022

Shyam Lal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 21-01-2022

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 37, 42
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2022) 01 SHI CK 0057

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Vishw Raj Chauhan, Sumesh Raj, Narender Guleria, Kunal Thakur

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Petitioner is an accused in case registered vide FIR No. 03 of 2022, dated 04.01.2022, at Police Station, Majra, Tehsil Paonta Sahib, District

Sirmaur, H.P. under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act"). Petitioner is in custody since 05.01.2022.

2. Petitioner has approached this Court for grant of bail under Section 439 Cr.P.C., in the above noted case. It has been contended on behalf of

petitioner that petitioner has been falsely implicated and no contraband has been recovered from his conscious possession. Petitioner is permanent

resident of Village Chandpur Kothri Bayas, Tehsil Paonta Sahib, District Sirmaur, H.P. His pre-trial incarceration shall serve no useful purpose. He

undertakes not to tamper with prosecution evidence and is ready and willing to abide by all the conditions, as may be imposed against him.

3. In response, the status report has been filed on behalf of the respondent. It has been stated that on 04.01.2022, a police party, on secret information, searched the dwelling house of petitioner after complying with Section 42 of the NDPS Act and also by associating two independent witnesses. On search of the house, 133 grams. of Charas was recovered. However, nothing was recovered on personal search of the petitioner. The bail application has been opposed on the ground that petitioner is involved in trade of dispensing drugs to adolescents. Petitioner on being released on bail, may again indulge in similar activity and may win-over the witnesses by making threats, inducements to them.

4. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State and have also gone through the status report and police file.

5. As per the allegation of respondent, 133 grams. of Charas has been recovered from the house of petitioner. The quantity of contraband is intermediate and hence the rigors of Section 37 of the NDPS Act will not apply. The investigation is still continuing and the challan, if any, is yet to be presented. The trial, if any, in the case may take considerable period before conclusion.

6. There is no allegation against petitioner that he has been found involved in any other similar offence on earlier occasion. No criminal history of the petitioner has been pointed out. The allegations against petitioner are yet to be proved. Pre-trial incarceration cannot be ordered as a matter of rule. No useful purpose shall be served by keeping the petitioner in custody for indefinite period, especially when, investigation qua him is already complete.

7. The petitioner is permanent resident of Village Chandpur Kothri Bayas, Tehsil Paonta Sahib, District Sirmaur, H.P. It has not been contended on behalf of the respondent that in case of release of petitioner on bail, he may flee from the course of justice. It has also not been stated by the respondent that petitioner has potential to affect the course of trial or to influence the witnesses. Only apprehension of the respondent that petitioner may again engage in the trade of selling drugs, can be taken care of by imposing appropriate conditions.

8. In the peculiar facts and circumstances of the case, the application is allowed and the petitioner is ordered to be released on bail in case registered

vide FIR No. 03 of 2022, dated 04.01.2022, at Police Station, Majra, Tehsil Paonta Sahib, District Sirmaur, H.P. under Section 20 of the NDPS Act,

on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of learned Judicial Magistrate First

Class, Paonta Sahib, District Sirmaur, H.P. This order is, however, subject to following conditions and it is clarified that in case of breach of any of the

conditions, the respondent shall be at liberty to approach this Court for cancellation of the bail granted to the petitioner: -

i) That the petitioner shall continue to join the investigation in case so required.
ii) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, being made by petitioner, the bail granted to the petitioner in this case, shall automatically be cancelled.

iii) That the petitioner shall not leave the territory of India without express leave of this Court till the completion of investigation and thereafter of the Trial Court during the Trial, if any.

iv). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

v) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

9. 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.