

(2023) 02 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 287, 288, 289 Of 2023

Sunder Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-02-2023

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 0005

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Ajay Kochhar, Bhairav Gupta, Ashwani Kumar Negi, Vishal Panwar, Rajat Chauhan

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. By way of instant petitions, filed under Section 439 of the Criminal Procedure Code, the petitioners are seeking bail in case F.I.R. No. 09/2023, dated 23.01.2023, registered at Police Station Sunni, 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 22. 01.2023, the police party was on routine patrolling duty. Around 11:20 p.m., when the police party was present at place Maandri, they received a secret information that chitta/heroin is being transported by three persons namely Om Prakash, Pardeep and Sunder Singh, who are coming from Dhaami Side and going towards Rampur side, in an Alto car, bearing registration No. HP-06B-1203. The police associated one Tek Singh as an independent witness from the spot. Around 11:50 p.m., the abovementioned vehicle came from Dhaami side to Baagipul side, which was signaled to stop. There were three persons sitting in the vehicle. The person sitting on the driver seat of the vehicle disclosed his name as Sunder Singh, the

person sitting on the co-driver seat of the vehicle disclosed his name as Om Parkash and the person sitting on the rear seat of the vehicle disclosed his name as Pardeep (petitioners herein). During checking of the vehicle, when footmats of the co- driver seat and rear seat of the vehicle were lifted, two plastic packets were found, which were wrapped with transparent tape. On opening of the said plastic packets, a light brown coloured substance was found, which on the basis of experience was found to be chitta/heroin. On weighment, the total recovered contraband was found to be 30.98 grams. Thereafter, the police completed all the codal formalities and FIR as detailed hereinabove was registered against the petitioners. Consequently, the petitioners were arrested.

3. Mr. Ajay Kochhar, learned Senior Counsel assisted by Mr. Ashwani Kumar Negi, Advocate, for the petitioners has contended that the petitioners are innocent and have been falsely implicated in this case. He has further contended that nothing remains to be recovered at the instance of the petitioners and as such, the petitioners, who are in custody since their arrest, are required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail applications on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioners, they are not entitled to be enlarged on bail.

5. I have heard the learned Senior Counsel for the petitioners 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 petitioners have made out a case for grant of bail, as a perusal of the record indicates that the petitioners have been arrested for possessing total 30.98 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 petitioners were arrested on 23.01.2023 and since then they are behind the bars. There is no evidence on record to suggest that the petitioners will tamper with the prosecution evidence or will flee from justice, if released on bail. Moreover, chargesheet in the case is yet to be filed and the trial may take sufficiently long time to conclude. Therefore, no fruitful purpose will be served if the petitioners are kept behind the bars for an unlimited period.

6. Considering the overall facts and circumstances of the case and since the quantity of chhitta/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 petitioners on bail is required to be exercised in their favour. Accordingly, the bail applications are allowed and it is ordered that the petitioners, who have been arrested by the police, in case F.I.R. No. 09/2023, dated 23.01.2023, registered at Police Station Sunni, District Shimla, H.P., under Sections 21 & 29 of NDPS Act, shall be forthwith released on bail, subject to their furnishing personal bond to the tune of Rs. 50,000/- (each), with one surety in the like amount (each), to the satisfaction of learned Trial Court. This bail order is subject, however, to the

following conditions:-

(i) that the petitioners will appear before the Court and the Investigating Officer whenever required ;

(ii) that they 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 they 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 they will not repeat the offence, as is alleged to have been committed by them.

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

(vi) that they 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 petitioners.

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.