

(2021) 02 SHI CK 0287

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 349, 350, 351 Of 2021

Sushil Chauhan And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 26-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2021) 02 SHI CK 0287

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Rohit Sharma, Anuj Gupta, S.C. Sharma, P.K. Bhatti, Ramesh Chand

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in

case FIR No. 26 of 2021, dated 11.02.2021, under Sections 21 and 29 of the ND&PS Act, registered in Police Station Sadar Solan, District Solan,

H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. The petitioners are

permanent residents of Himachal Pradesh and 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 them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 11.02.2021, at about 08:00 p.m., when a police team was on routine patrol duty near

Tapan Hyundai, Shamlech, police spotted a vehicle (Mahindra Bolero, having registration No. HP07A-0548), which was parked alongside the national highway. When the police team looked into the vehicle, the person sitting on the rear seat was sleeping. Thereafter, the driver of the vehicle, on being inquired by the police, divulged his name as Sahil Negi (one of the petitioners herein) and he abruptly started the vehicle due to which the sleeping person woke up. Police inquired the names of other persons, who divulged their names as Himanshu Negi and Sushil Chauhan (other petitioners herein). As the police had suspicion of petitionersâ?? having some contraband, police associated two independent witnesses and thereafter conducted search of the vehicle. During the search of the vehicle, police recovered a box of cigarette, which contained a plastic pouch having some substance, which was heroin. The recovered contraband, on weighing, was found to be 7 grams. Thereafter, the police completed all the codal formalities. The vehicle alongwith its documents and key was taken into possession and the petitioners were arrested. Police prepared the spot map and recorded the statements of the witnesses. During the course of interrogation, petitioners divulged that they purchased the contraband from a person at Haryana, but they did not disclose the whereabouts of that person. It has come in the investigation that petitioner, Sushil procured the phone number of a person with whom he had a word and thereafter a person delivered the contraband to him, but petitioner Sushil divulged that he is not acquainted with that person. As per the police, the investigation is in its initial stage and in case the petitioners are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners have committed a serious crime. In case the petitioners are enlarged on bail, at this stage, they may tamper with the prosecution evidence and may also flee from justice, so the bail applications of the petitioners be dismissed.

4. I have heard the learned Counsel for the petitioners, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. The learned Counsel for the petitioners have argued that the petitioners have been falsely implicated in the present case. He has further argued that

the petitioners are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are permanent residents of Himachal Pradesh. He has further argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, especially when nothing remains to be recovered at their instance, their custody is not at all required by the police and considering the fact that the petitioners are drug addicts and not the drug peddlers, so the petitions may be allowed and the petitioners may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners have committed a serious crime. He has further argued that in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail applications of the petitioners may be dismissed.

6. In rebuttal the learned Counsel for the petitioners has argued that the petitioners cannot be kept behind the bars for an unlimited period, especially nothing remains to be recovered at their instance, their custody is not at all required by the police, so the petitions be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the quantity of recovered contraband, i.e., 7 grams, which is non-commercial quantity, considering the age of the petitioners, who are in between 18 to 22 years, they are permanent residents of Himachal Pradesh thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the fact that prima facie record does not reflect that the petitioners are drug peddlers, rather it seems that they are drug addicts, who need proper counseling and treatment to give-up narcotics, also considering the fact that nothing remains to be recovered at the instance of the petitioners and their custody is also not at all required by the police, the petitioners are ready and willing to abide by the terms and conditions of bail, in case so granted and also the fact that the petitioners cannot be kept behind the bars for an unlimited period, so this Court finds that the present is a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour.

Accordingly, the petitions are allowed and it is ordered that the petitioners, who have been arrested by the police in case FIR No. 26 of 2021, dated 11.02.2021, under Sections 21 and 29 of the ND&PS Act, registered in Police

Station Sadar Solan, District Solan, H.P., shall be released on bail

forthwith in this case, subject to their furnishing personal bond in the sum of Rs.25,000/- (rupees twenty five thousand) each with one surety each in

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

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

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

(iii) That the petitioners 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.

8. In view of the above, the petitions are disposed of.

Copy dasti.