

(2021) 07 SHI CK 0237

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1331, 1332 Of 2021

Umesh Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 28-07-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Citation : (2021) 07 SHI CK 0237

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Balwant Singh Thakur, Arvind Sharma P.K. Bhatti, Bharat Bhushan, Amit Dhumal, Manoj Bagga

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

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

case FIR No. 38 of 2021, dated 10.06.2021, under Sections 21 & 29 of the ND&PS Act, registered at Police Station Kandaghat, 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. They are 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 the petitioners

behind the bars, so they be released on bail.

3. Police report stands filed. Tersely, as per the prosecution story, on 09.06.2021, at about 09:00 p.m., a police team was on routine patrol duty near

Chail Chowk (Kandaghat), where the police got a secret tip-off that vehicle,

having registration No. PB-02 DA-6577, coming towards Shimla, has two occupants and they have narcotics. Police associated two independent witnesses and intercepted the aforesaid vehicle. The driver of the vehicle divulged his name as Umesh Singh and the passenger disclosed his name as Tarun Preet Singh (petitioners herein). Initially, the police personnel gave their personal search and thereafter the vehicle was searched. During the search, police recovered a transparent envelop, which contained some brownish substance, which, on being examined through Drug Detection Kit, found to be heroin. Police also recovered currency notes amounting to Rs. 90,800/- (ninety thousand eight hundred only). The recovered substance, on being weighed, was found to be 53.10 grams. Thereafter, the police completed all the codal formalities. Police prepared a spot map, spot was photographed/videographed and the statements of the witnesses were also recorded. Both the petitioners were arrested and the relevant recoveries were made. During the course of investigation, it was unearthed that both the petitioners used to supply the contraband in Himachal. Police also found financial transactions through the bank account of petitioner Umesh Singh. Investigation is still going on and after completion of the same challan will be presented in the learned Trial Court. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were found involved in a serious offence and they were found transporting 53.10 grams of heroin. There is possibility that in case, at this stage, if the petitioners are enlarged on bail, they may flee from justice and may tamper with the prosecution evidence, as they are residents of Uttarakhand and Punjab, so their bail applications be dismissed.

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

5. The learned Counsel for the petitioners has 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. No

Â fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, as nothing remains to be recovered at their instance, investigation is in its final stage and after completion of investigation

challan will soon be presented in the learned Trial Court. The custody of the petitioners is not at all required by the police for further investigation, so the bail applications be allowed. Conversely, the learned Additional Advocate General has argued that the petitioners were found involved in a serious offence and from their possession 53.10 grams of heroin was recovered. He has further argued that the petitioners are drug peddlers, as no drug addict could have kept such a quantity of contraband for personal use. He has argued that in case, at this stage, if the petitioners 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 be dismissed.

6. In rebuttal the learned Counsel for the petitioners has argued that the petitioners are neither in a position to flee from justice nor in a position to tamper with the prosecution evidence. The custody of the petitioners is not at all required by the police, as the investigation is almost complete, nothing remains to be recovered at the instance of the petitioners and soon challan will be presented in the learned Trial Court. The petitioners are ready and willing to abide by the terms and conditions of bail, in case granted, and moreover, the petitioners cannot be kept behind the bars for an unlimited period, so the petitioners may be enlarged on bail by allowing the instant bail petitions.

7. At this stage, after considering the age of the petitioners, who are only 26 years of age, the fact that they are first time offenders and have no previous history of case(s) under the ND&PS Act or any other criminal offence(s), the quantity of recovered contraband, i.e., 53.10 grams, which is intermediate quantity, the petitioners are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are ready and willing to join and co-operate in the investigation and also ready to abide by the terms and conditions of bail, in case granted, the fact that investigation is almost complete and soon challan will be presented in the learned Trial Court, nothing remains to be recovered at the instance of the petitioners, custody of the petitioners is not at all required by the police, the fact that the petitioners cannot be kept behind the bars for an unlimited period and lastly considering the overall facts, which have 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 petitioners on bail, is required to be exercised in their favour. Accordingly, the petitions

are allowed and it is ordered that the petitioners, in case FIR No. 38 of 2021, dated 10.06.2021, under Sections 21 & 29 of the ND&PS Act,

registered at Police Station Kandaghat, District Solan, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bonds in

the sum of Rs.50,000/- (rupees fifty 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.

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