

(2023) 08 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1461 Of 2023

Upender Verma Alias Opendar Verma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-08-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21, 29, 37, 61, 85

Citation : (2023) 08 SHI CK 0026

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Atul Verma, Pranay Pratap Singh, Sidharth Jalta

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition, filed under Section 439 of the Criminal Procedure Code, the petitioner has prayed for grant of regular bail, in FIR No. 248 of 2022, dated 22.10.2022, registered under Sections 21, 29-61-85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act'), at Police Station Sadar Hamirpur, District Hamirpur, H.P.

2. Status report filed, which is perused and ordered to be taken on record.

3. Learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in the case. He has further submitted that the petitioner is in custody since 22.10.2022 and as the investigation is complete and nothing is to be recovered from him, therefore also further detention of the petitioner in custody is not going to serve any purpose. Learned counsel also submitted that as the alleged recovery of contraband is of intermediate quantity, therefore as the traps of Section 37 of the NDPS Act are not involved in the present case, it will be in the interest of justice in case this petition is allowed and the petitioner is ordered to be released on bail. Learned counsel also

submitted that out of the three accused, one accused has already been released on bail by learned Special Judge.

4. The bail is opposed by the State. Learned Deputy Advocate General has argued that the petitioner is a habitual offender and there is another FIR registered against him under the provisions of the NDPS Act. He further submitted that as the case is at a very nuance stage, therefore, if released on bail, there is each and every possibility that the petitioner may try to win over or influence the witnesses and this may create impediments in the course of a fair trial. He further submitted that though it is a fact that one of the co-accused has been ordered to be released on bail, but learned Special Judge refused the grant of bail in favour of the present petitioner solely on the ground that there were other cases registered against the petitioner. Accordingly, he submitted that as no case is made for grant of bail, the present petition be dismissed.

5. I have heard learned counsel for the parties and carefully gone through the status report.

6. Perusal of the status report demonstrates that though it is a matter of record that there is earlier also an FIR registered against the petitioner under the provisions of the NDPS Act, but the same pertains to 5 grams of contraband, i.e. small quantity. As far as the present case is concerned, the allegation against the petitioner and the other co-accused is that 'Chitta', weighing 48 grams was recovered from their conscious possession of the accused.

7. It is not in dispute that investigation is complete and the case is at the stage of recording of the statements of prosecution witnesses. It is also an admitted fact that one of the co-accused stands released on bail by the Court of learned Special Judge in terms of order dated 07.12.2022.

8. In these peculiar circumstances, taking into consideration the fact that earlier case registered against the petitioner is relatable to small quantity and presently also the FIR registered against the petitioner is of intermediate quantity and one of the co-accused has already been released on bail, this petition is allowed by ordering the release of the petitioner in FIR No. 248 of 2022, dated 22.10.2022, registered under Sections 21, 29-61-85 of the NDPS Act, at Police Station Sadar Hamirpur, District Hamirpur, H.P., on his furnishing personal bond to the tune of Rs.50,000/- (Rs. Fifty Thousand) with one surety in the like amount, to the satisfaction of the learned CJM/ACJM/JMFC concerned, within a period of two weeks from today, subject to the following conditions:-

i.) Petitioner shall attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

ii.) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

iii.) He shall not 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 Court or the Police Officer; and

iv) He shall not leave the territory of the State of Himachal Pradesh without prior permission of the learned trial Court.

9. As far as the apprehension expressed by the learned Deputy Advocate General that if released on bail, the petitioner may try to win over the witnesses etc. is concerned, liberty is granted to the State to approach this Court for cancellation of the bail in case the petitioner violates any of the conditions being imposed herein upon him while granting bail.

10. It is clarified that findings, which have been returned by this Court while deciding this petition, are only for the purpose of adjudication of the present bail petition and learned Trial Court shall not be influenced, in any manner whatsoever, by any of the findings so returned by this Court in the adjudication of this petition during the course of the trial. The petition stands disposed of in the above terms.