

(2020) 07 SHI CK 0100

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1054 Of 2020 & Criminal Miscellaneous Petition (M) No. 1055 Of 2020

Vishal Masih

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15, 21, 29, 37, 42(2)
Evidence Act, 1872 — Section 27

Citation : (2020) 07 SHI CK 0100

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Rahul Mahajan, Manoj Bagga

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner has prayed for release on bail in FIR No. 89 of 2020, dated 21.04.2020, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as 'the Act'), registered at Police Station Solan, District Solan, Himachal Pradesh.

2(i) According to the status report, a police patrolling party received a secret information about one Suresh Thakur selling heroin in his flat at Saproon, Tehsil and District Solan, Himachal Pradesh. It was further informed that raid of his flat, at that very time, can yield to recovery of huge quantity of heroin. On receipt of this information, procedure in accordance with Section 42(2) of the Act was complied with and a raiding party was constituted. Due to curfew imposed on account of COVID-19 Pandemic, no independent witness(s) could be associated with the raid and search. Even, the people residing in the area adjoining to the premises in question refused to be part of the raiding party. The locked premises were unlocked by Suresh Thakur himself. Search was carried out in accordance with law, which led to recovery of brown coloured substance alongwith a small

digital weighing machine inside a transparent polythene, kept in a locker of Godrej Almirah lying in the room. The recovered substance was detected as heroin on checking with DD Kit. It weighed 15.07 gms. on the digital machine. The procedure prescribed in law was complied with, which eventually led to the registration of instant FIR against the said Suresh Thakur under Section 21 of the Act. He was arrested on 21.04.2020.

2(ii) During investigation, Suresh Thakur disclosed that he had given rupees 40,000/- to his friend Vishal, the bail petitioner. Both of them had planned to go to Delhi in a Canter Vehicle No. HP-64-C-1420 for procuring heroine. However, on refusal of Canter driver, only the bail petitioner went to Delhi to procure heroin. On 19.04.2020 Suresh Thakur instructed one Vivek @ Vicky to obtain his (Suresh Thakur's) important articles from bail petitioner, without disclosing what those articles were. In this manner, bail petitioner handed 20 gms. of heroin to Vivek who, without knowing the contents handed the same to Suresh Thakur, out of which 15.07 gms, was eventually recovered from the premises of Suresh Thakur by the patrolling party during search carried out on 21.04.2020.

2(iii) Petitioner was already in custody in another FIR No. 31 of 2020, dated 21.04.2020, registered under Sections 15, 21 and 29 of the Act at Police Station, Parwanoo, District Solan, H.P. His custody was transferred in the instant FIR under the orders passed by learned Additional Chief Judicial Magistrate, Kasauli, District Solan, H.P. and he was brought to Police Station, Solan for investigation. During investigation, the petitioner disclosed that against rupees 40,000/- he had obtained 40 gms. of heroine from an un-identified Nigerian National in Delhi, out of which 20 gms. of heroin he had handed to one Vicky, on the asking of Suresh Thakur. 15.07 gms. of heroin, however, was recovered by police from the premises of Suresh Thakur. 18.05 gms of heroin was recovered at the instance of petitioner by Parwanoo police on 22.04.2020 with respect to which FIR No. 31 of 2020 has been registered at Police Station, Parwanoo. The petitioner was arrested in the instant FIR on 23.04.2020.

2(iv) According to the status report, investigation in the case is almost complete. Nothing remains to be recovered from the petitioner.

The SFSL report confirmed the substance recovered during search as heroin. It has also been mentioned in the status report that petitioner and Suresh Thakur are habitual consumers of heroin. The owner of the premises, Suresh Thakur, has been enlarged on bail by a Co-ordinate Bench of this Court vide order dated 30.06.2020.

3. Learned counsel for the petitioner submitted that petitioner is behind bars in the instant FIR w.e.f. 23.04.2020. Investigation in the case is complete. Challan in the case has already been presented on 11.06.2020. The contraband, allegedly procured by the petitioner, was 40 gms. of heroin in all, out of which, 18.45 gms. was statedly recovered from the premises of one Suresh Thakur, who has already been enlarged on bail. In these circumstances, he prays for release

of the petitioner on bail.

Learned Assistant Advocate General submitted that petitioner is also involved in FIR No. 31 of 2020, registered against him at Police Station, Parwanoo, under Sections 15, 21 and 29 of the Act. There is possibility that petitioner might try to influence the prosecution evidence and witnesses, therefore, he be not enlarged on bail.

4. The quantity of contraband, allegedly procured by the petitioner, part of which is the subject matter of instant FIR and part of which, according to the status report, inter-alia, is also the subject matter of FIR No. 31 of 2020 (Cr.M.P.(M) No. 1055 of 2020), is though more than 'small', but less than 'commercial', as notified under the Act, therefore, rigors of Section 37 of the Act will not be attracted. Investigation in the case is complete and challan in the instant case has already been presented before the Court of competent jurisdiction on 11.06.2020. No doubt, petitioner is involved in another FIR No. 31 of 2020, however, as per status reports, both the FIRs, inter alia, pertain to parts of 40 gms. of heroin, allegedly procured by the petitioner from Delhi, some of which he had allegedly passed on to Suresh Thakur on his asking and some was recovered by Parwanoo police on the basis of alleged disclosure statement of the bail petitioner himself recorded under Section 27 of the Indian Evidence Act. Suresh Thakur has already been enlarged on bail. The petitioner is behind the bars in this FIR since 21.04.2020. He cannot be kept behind bars for an indefinite period. In any case, one strict condition can be imposed upon him that in case he, in future, is found to be involved in any offence under the Act, then the instant bail granted to him is liable to be cancelled on this count and this shall be considered as a negative factor for his future bail application(s), if any. Accordingly, the present petition is allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs. 75,000/- (Rupees Seventy Five Thousand) with one local surety in the like amount to the satisfaction of the learned trial Court having jurisdiction over the Police Station concerned, subject to the following conditions:-

(i). The petitioner is directed to join and cooperate the investigation of the case as and when called for by the Investigating Officer in accordance with law.

(ii). The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.

(iii). The petitioner will not leave India without prior permission of the Court.

(iv). The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(v). In case the petitioner is put to trial, then he shall attend the trial on every hearing, unless exempted in accordance with law.

(vi). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

(vii). It is made clear that in case the petitioner is arraigned as an accused in future, in any FIR under NDPS Act, then his bail is liable to be cancelled. It shall also be considered as a negative factor in consideration of his future bail application(s), if any. It is open for the Investigating Agency to move appropriate application in that regard.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned trial Court shall decide the matter without being influenced by any of the observations made above.

The Registry is directed to send a copy of this order to the District and Sessions Judge concerned through e-mail. The parties and the competent Court/Authority, attesting the personal/surety bonds, shall not insist upon for obtaining/requiring certified copy(s) of this order and shall download the same from the website of the High Court. However, the Registry is directed to send copy(s) of this order to learned counsel for the parties through e-mail subject to furnishing e-mail addresses by them, if so required.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

A copy of this judgment, duly authenticated by the Secretary, be supplied to learned counsel for the parties, if so requested.