

(2019) 11 SHI CK 0120

High Court Of Himachal Pradesh

Case No: Criminal Miscellaneous Petition (M) No. 2129 Of 2019

Prem Raj

APPELLANT

Vs

State Of Himachal
Pradesh

RESPONDENT

Date of Decision: Nov. 28, 2019

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 313, 436, 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 20, 37#Indian Penal Code, 1860 " Section 302

Citation: (2019) 11 SHI CK 0120

Hon'ble Judges: Vivek Singh Thakur, J

Bench: Single Bench

Advocate: Nareshwar Singh Chandel, Vinod K. Gupta, Desh Raj Thakur, R.P. Singh, Kamal Kishore, Devender Nath Verma

Final Decision: Dismissed

Judgement

Vivek Singh Thakur, J

1. This petition has been filed, under Section 439 Code of Criminal Procedure (in short "Cr.P.C.") seeking grant of regular bail to the petitioner,

in case FIR No.42 of 2018 dated 03.08.2018, registered at Police Station, Nankhari, District Shimla, H.P., under Section 20 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as "NDPS Act").

2. Status report has been filed by the State, wherein it is stated that earlier also, petitioner Prem Raj was found involved in four criminal cases and out

of those criminal cases, in FIR No.70 of 2008 dated 17.05.2008, registered under Section 61-1-14 of the Excise Act, in Police Station Rampur,

petitioner has been acquitted on 12.05.2010; in case FIR No.67 of 2010 dated 28.03.2010, registered under Section 302 of the Indian Penal Code (in

short 'IPC') in Police Station, Rampur, petitioner has been acquitted by learned Sessions Judge, Kinnaur at Rampur; however, trial in case FIR

No. 129 of 2009 dated 06.07.2009, registered under Section 61-1-14 of the Excise Act, in Police Station, Rampur, is still pending; and lastly in case

FIR No.202 of 2012 dated 20.11.2012, registered under Section 20 of the NDPS Act, in Police Station, Rampur, petitioner has been convicted on

05.01.2018 by learned Sessions Judge, Kinnaur at Rampur. It is pertinent to note that petitioner was convicted under Section 20 of the NDPS Act on

05.01.2018, but no substantial sentence was imposed upon him and only fine of Rs. 12,000/- was imposed. Thereafter, within eight months, petitioner

was again found to have been in possession of contraband and in present case, FIR has been registered against him under Section 20 of the NDPS

Act for carrying 107 grams of charas.

3. Learned counsel for the petitioner, referring Section 436 Cr.P.C., has submitted that petitioner is behind the bars for more than fifteen months,

whereas for intermediate quantify of charas i.e. from more than 100 grams up to 1000 grams, maximum sentence of ten years has been provided and

petitioner has been involved in a case, alleging to have found in possession of charas weighing 107 grams and, therefore, he has spent time more than

the sentence which can be imposed upon him for carrying 107 grams of charas. It is further submitted by learned counsel for the petitioner that there

is a function in the family of petitioner on 02.12.2019 and, therefore, considering entire facts and circumstances, petitioner is entitled for bail at this

stage. Learned counsel for the petitioner has also submitted that rigors of Section 37 of the NDPS Act are also not attracted in the present case and in

view of right to personal liberty of petitioner, he deserves to be released on bail.

4. So far as plea with regard to family function in the petitioner's family is concerned, no material has been placed on record to substantiate the

same and to justify release of the petitioner on bail on that ground at this stage. Had it been so, Court may also have considered his interim bail for

attending the function, but for want of material on record, even such request cannot be acceded to.

5. On the basis of material made available by the police, learned Deputy Advocate General, submits that statement of the accused under Section 313

of Cr.P.C. was recorded on 01.11.2019 and thereafter, case was listed for leading defence evidence on 14. 11.2019, on which date, no defence

witness was present and now case has been adjourned for recording evidence of defence on 12. 12.2019.

6. Plea of petitioner with respect to effect of quantity of alleged recovery of 107 grams of charas and application of the rigors of Section 37 of the

NDPS Act is concerned, the same has been duly considered by this Court in its previous judgment passed on 18.12.2018, in Cr.M.P(M) No.1611 of

2018, titled as Prem Raj vs. State of H.P. Thereafter, petitioner had also moved an application before learned Special Judge-II, Kinnaur at Rampur

Bushehar, H.P. in June 2019, which was considered and rejected by the said Court.

7. Keeping in view entire facts and circumstances and especially that there is no delay in the trial and it is at the final stage, I do not find any merit in

the present petition and accordingly, same is dismissed with observation that it is expected from the trial Court that trial shall be concluded within one

month after recording defence evidence, if any, so led by the petitioner.

Petition stands disposed of.