

Pankaj Sharma Vs State Of H.P

Court: High Court Of Himachal Pradesh

Date of Decision: Feb. 4, 2021

Acts Referred: Code Of Criminal Procedure, 1973 " Section 437A, 439, 446
Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 37

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Gaurav Sharma, Sudhir Bhatnagar, Seema Sharma, Narender Singh Thakur, Kamal Kant, Manoj Bagga

Final Decision: Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, who is in custody under Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), w.e.f. 02.01.2021 for possessing

7.22 grams of heroin (Deacetyl morphine), has now come up before this Court under Section 439 of CrPC, seeking bail, on the grounds that the

quantity of contraband allegedly seized is intermediate quantity and does not restrict bail, because the quantity greater than 250 grams of heroin

(Deacetyl morphine), falls in the category of the commercial quantity, hence the restrictions for bail imposed in S. 37 of NDPS Act, do not apply, and

in the present case he is in custody for a considerable time.

2. Earlier, the petitioner had filed a petition under Section 439 CrPC before the concerned Sessions Court. However, vide order dated 20.01.2021 Ld.

Special Judge-III, Solan, Camp at Arki, dismissed the petition on the ground that the petitioner had come to HP to sell heroin, whereas he is resident of

Delhi and his antecedents are yet to be verified.

3. In Para -8 of the bail application, the petitioner declares having no criminal history.

4. Briefly, the allegations against the petitioner are that on 02.01.2021, police officials were conducting patrolling in casual clothes in official vehicle. At

about 4:20 p.m. when they reached near Mini Secretariat (DC Office), then they noticed one car parked on the hill side. This car was bearing Delhi

registration number and two persons were sitting inside it. When the police officials gave their introduction and inquired from them, then they became

perplexed and could not give satisfactory reply. This raised suspicion in the mind of the investigator and he intended to search them. He associated a

passenger as independent witness and in his presence, the investigator inquired from the driver of the car, who revealed his name as Gurpreet Singh,

resident of Haryana and the person sitting on the front left seat, disclosed his name as Pankaj Sharma, petitioner herein, resident of Delhi. On search

of the vehicle, from the right side of arm rest box of the driver seat, police recovered a polythene pouch, which contained brown coloured substance.

On testing the same from drug detection kit, it was tested positive for heroin, which when weighed on electronic scale, it measured 07.22 grams. After

that, the investigator conducted procedural requirements of NDPS act and Cr.P.C and arrested the accused alongwith main accused. Based on these

allegations, the Police registered the FIR mentioned above.

5. Ld. Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. While opposing the bail, the alternative arguments on behalf of the State are that if this Court is inclined to grant bail, then such a bond must be

subject to very stringent conditions.

7. The petitioner is a maiden offender and is already in custody for sufficient time in relation to the quantity of heroin (Deacetyl morphine recovered

from him and co-accused. Thus, the petitioner makes out a case for grant of bail.

8. ` In Sami Ullaha v Superintendent Narcotic Control Bureau, (2008) 16 SCC 471, the Hon'ble Supreme Court holds that in intermediate quantity,

the rigors of the provisions of Section 37 may not be justified. In Sunny Kapoor v State of HP , CrMPM 2168 of 2020, (Para 15), this Court observed

that when the quantity is less than commercial, the rigors of Section 37 of the NDPS Act will not attract, and factors become similar to bail petitions

under regular statutes. Thus, when the maximum sentence cannot exceed ten years, and the accused is yet to be proved guilty, the grant of bail is

normal, unless the Prosecution points towards the exceptional circumstances, negating the bail.

9. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can

be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that

unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

10. Given the above reasoning, coupled with the peculiar facts and circumstances of the case, the Court is granting bail to the petitioner, subject to

strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. In *Manish Lal Shrivastava v State of Himachal Pradesh*, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that

any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to

switch over to another.

12. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR

25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Judicial Magistrate having the jurisdiction over the Police Station

conducting the investigation, and in case of non-availability, any Ilaqa Magistrate. Before accepting the sureties, the concerned Magistrate must satisfy

that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind the

Jurisprudence behind the sureties, which is to secure the presence of the accused.

13. In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-), made

in favour of ""Chief Judicial Magistrate, District Solan, H.P.,

a) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g.,

HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the

linked account.

b) Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.

c) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

d) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get

the online liquidation disabled.

e) The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information

be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR

number.

f) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.

g) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for

substitution of fixed deposit with surety bonds and vice-versa.

h) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be

endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC,

1973, or until discharged by substitution as the case may be.

14. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay

the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on

this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s),

WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall

immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers,

WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police

officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to

tamper with the evidence.

d) The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the

investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail.

Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall

not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of

summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any).

[Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July

10, 2020]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.

iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the

petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to

achieve the purpose.

15. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates

any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise,

the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

16. Any advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of

this bail order, in vernacular and if not feasible, in Hindi.

17. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for

modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking

cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

18. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

19. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

20. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

21. There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner can download this order along with

the case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer or the Court wants to verify the

authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

The petition stands allowed in the terms mentioned above.