

## Suresh Vs State Of Himachal Pradesh

**Court:** High Court Of Himachal Pradesh

**Date of Decision:** Feb. 4, 2021

**Acts Referred:** Code Of Criminal Procedure, 1973 " Section 82, 173(2), 207, 439

**Hon'ble Judges:** Anoop Chitkara, J

**Bench:** Single Bench

**Advocate:** Manoj Pathak, Ram Lal Thakur

**Final Decision:** Dismissed

### Judgement

Anoop Chitkara, J

1. The petitioner, incarcerated upon his arrest, for possessing commercial quantity of Charas, has come up before this Court under Section 439 of

CrPC, seeking regular bail.

2. Earlier, the petitioner had filed a petition under Section 439 Cr.PC before the concerned Sessions Court. However, vide order dated 29.10.2020,

learned Special Judge-II, Sirmaur District at Nahan, H.P., dismissed the petition because the accused is a habitual offender.

3. In Para 7 of the bail application, the petitioner declares having no criminal history relating to the offences prescribing sentence of seven years and

more, or when on conviction, the sentence imposed was more than three years.

4. Briefly, the allegations against the petitioner are that on 9.3.2016, when the Police officials of aforesaid Police Station were on patrolling duty and

were present at Giripul, they noticed one Maruti Car which was coming from Sanaura village and leading towards Solan side. The Police officials

signaled the driver to stop and noticed that in the car three more persons were sitting. On inquiry, they revealed their names as Dharam Singh, Ajay

Kumar and Baljinder Singh. The Police searched the vehicle and found that below the driver seat, there was a bag and the Police inquired from the

occupants that who owned that bag. On this, Baljinder Singh stated to the Police that the said bag belonged to him. On opening the same, the Police

recovered a black coloured substance, which on the basis of smell and experience was found to be Charas. On weighing the substance, it was found

to be 1.978 Kilograms. After that, the Police Officials conducted the procedural requirements under ND&PS Act and Cr.PC and arrested the

accused. Thereafter, FIR mentioned above was registered. The Forensic Science Laboratory tested the substance as Charas. During investigation,

the Police found that Suresh Kumar, present bail petitioner, also drove the car from Chandigarh and was involved in the transportation of the

contraband. The Police also collected the call details of the Mobile Phones of Baljinder Singh and Suresh Kumar. However, the said SIM was not

responding and it was switched off right from 10.3.2016 onwards. The Police could not trace the other co-accused, Ajay Kumar and Dharam Singh

and applied to JMFC, Rajgarh under Section 82 Cr.PC for declaring them as Proclaimed Offenders.

5. Learned counsel for the petitioner contends that the petitioner is a first offender and incarceration before the proof of guilt would cause grave

injustice to the petitioner and family.

6. On the contrary, the State contends that the Police have collected sufficient evidence against the bail petitioner and the co-accused. Another

argument on behalf of the State is that the crime is heinous, the accused is a risk to law-abiding people, and bail might send a wrong message to

society.

#### REASONING:

7. The Status report reveals that the petitioner had filed an application for anticipatory bail before this Court and vide order dated 17.10.2019, the same

was dismissed. Despite the dismissal of the bail application, the petitioner did not surrender, but kept on evading the arrest. It was only on 28.2.2020

that the Police arrested him, i.e. after a gap of more than 4 months. On inquiry about the fate of accused Baljinder, learned Assistant Advocate

General, has brought to the notice of this Court that the said Baljinder stands convicted by the Special Court. He has filed an appeal against his

conviction, which is registered as Cr. Appeal No.349 of 2018 and the same is pending adjudication before this Court.

8. Learned counsel for the petitioner has failed to satisfy this Court that how the presence of bail petitioner would be secured once he is released on

bail. As such, on this ground, the petition is dismissed at this stage.

9. Learned counsel for the petitioner referred to certain statements and memos from the police report, prepared under section 173(2) CrPC, copies of

which the accused had duly received in compliance to S. 207 CrPC. However, the documents which the learned counsel referred were neither filed

with the petition, nor its copies supplied to the Court and the State. Thus, the Court cannot base any finding on a document which is in the Counsel's

brief and not on the Court's file.

10. Counsel for the petitioner has also made several other arguments. Still, given that this Court is not inclined to grant bail, on the reasons mentioned

above, discussion of the same will be an exercise in futility. Any detailed analysis of the evidence may prejudice the case of the prosecution or the

accused.

11. Given above, in the facts and circumstances peculiar to this case, at this stage, the petitioner fails to make out a case for bail. The petition is

dismissed with liberty to file a new bail application.

12. 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.

The petition is dismissed.