
Sanju Sharma Vs State Of H.P

Criminal Miscellaneous Petition (M) No. 114 Of 2021

Court: High Court Of Himachal Pradesh

Date of Decision: Feb. 4, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 173(2), 207, 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 37

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Babita Chauhan, Narender Guleria, Vikas Rathour, Bhupinder Thakur, Gaurav Sharma, Divya Sood

Final Decision: Dismissed

Judgement

Anoop Chitkara, J

1. The petitioner, who is in judicial custody for possessing 1944 SPAS TRANCAN PLUS capsules, which are samples of Tramadol hydrochloride

Capsules, has come up before this Court under Section 439 CrPC, seeking regular bail on the ground that he has been falsely implicated in the case.

2. Earlier, the petitioner had filed a petition under Section 439 CrPC before the concerned Sessions Court. However, vide order dated 9.11.2020 Ld.

Special Judge-I, Una, HP, dismissed the petition because of the quantity involved.

3. As per para 14 of the bail petition, the petitioner has no criminal history. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on 7.8.2020, the police officials were on patrolling duty in a private vehicle to get secret

information and to detect crime relating to intoxicants in their jurisdiction. At about 2.05 p.m., day time, when they were present at Athwan Chowk,

then they noticed one person carrying a bag in his right hand. On seeing the police party, the accused got perplexed and started to run away. It arose

suspicion in the mind of Investigating Officer and they nabbed him at a distance of 20 to 25 steps. On inquiry, he revealed his name as Sanjay Sharma.

Thereafter, police associated two independent witnesses and in the presence of the independent witnesses, the said carry bag was opened, which was

found to contain strips of SPAS TRANCAN PLUS capsules. The police recovered the same and arrested the police. The police, after conducting the

procedural requirements of NDPS Act and CrPC, registered the aforesaid FIR.

5. The total number of SPAS TRANCAN PLUS capsules were 1944. The laboratory on testing found the capsules containing Tramadol

Hydrochloride, which is a psychotropic substance. The total weight of the powder is 970.056 grams and it is commercial quantity.

6. Ld. 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.

7. 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:

8. The commercial quantity of Tramadol Hydrochloride is greater than 250 grams. The quantity recovered is much greater than the commercial

quantity. The burden is on the petitioner to come out of the rigors of Section 37 of NDPS Act, which he has failed to do so at this stage.

9. Ld. 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 Ld. 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 in the Counsel's brief and not on

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.

In the given facts, the instant petition is dismissed.