
Sandeep Kumar Vs State Of H.P

Criminal Miscellaneous Petition (M) No. 1080 Of 2021

Court: High Court Of Himachal Pradesh

Date of Decision: June 25, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 35, 37, 42(1), 42(2)

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: G.R. Palsra, Nand Lal Thakur

Final Decision: Dismissed

Judgement

Anoop Chitkara, J

1. The petitioner, incarcerated upon his arrest has come up before this Court under Section 439 CrPC, for possessing commercial quantity of 1.100

kilograms Charas, has come up before this Court under Section 439 of CrPC, seeking bail.

2. Earlier, the petitioner had filed the following bail petition:

(a) Cr.MP(M) No. 166 of 2021, titled as Sandeep Kumar @ Sonu Vs. State of HP was filed before this Court and the same was dismissed on

4.2.2021 reserving liberty to the petitioner to file afresh with better particulars.

3. In Para 6 of the bail application, the petitioner declares having 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 23.1.2020 the police officials of the aforesaid Police Station were patrolling in their

jurisdiction where they received a secret information at around 12:45 am that an Alto Car bearing registration No. HP39-A-8456 was parked in

Serathana Forest for the last considerable time in a suspicious condition. On this the Investigator reached the said place where the said car was

parked. The police party inquired from the said person about the reasons for parking the said car in an isolated place. On this the person, who was

sitting in the car alighted from it and started walking friskily carrying a packet in his hand. While walking friskily the said person slipped on the road

due to slippery. On this the police officials nabbed him. They inquired from him as to why he is running and checked the polythene packet, which he

was carrying in his hand and noticed Charas in the same. After that it was weighed on an electronic scale and it measured 1.100 kilogram Charas.

After that the police officials arrested the accused person. Subsequently, the Investigator conducted procedural requirements under NDPS and Cr.PC

and also conducted other investigation. Based on these allegations, the Police registered the FIR mentioned above.

5. Ld. Counsel for the petitioner submits that the evidence collected against the petitioner is legally inadmissible. Ld. Counsel for the petitioner further

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. Further, the quantity involved is commercial, and S. 37 of the

NDPS Act's restrictions do not entitle the accused to bail. The accused has yet not discharged the presumption under S. 35 of the NDPS Act. 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 quantity of charas allegedly recovered from the petitioner is 1.100 kilograms, and thus falls in the category commercial quantity. The petitioner

has not stated anything to discharge the rigors of S. 37 of NDPS Act. As per the grounds taken in the petition the Investigator did not comply with the

provisions of Section 42(1) and 42(2) of the NDPS Act, which are mandatory. The answer to this, at this stage, is that a secret information was not

with respect to presence of any narcotic drugs and psychotropic substances in the car but it was a routine information as such on these facts and

circumstances there was prima facie no requirement to comply with the provisions. However, this observation is only for the purpose of this bail and it

shall not be considered at the time of trial. Given above, at this stage, the petitioner fails to make out a case for bail.

8. That the plea taken by the petitioner needs to be proved by preponderance of probability. During examination of the witnesses, the petitioner has not

annexed any complaint filed about false implication nor has made out any other grounds to come out of rigors of Section 37 of the NDPS Act.

9. Ld. Counsel for the petitioner submitted that as per newspaper reports, the State of Himachal Pradesh is legalizing cannabis (Charas), subject to the

rules and regulations framed in this regard. Be that as it may, the petitioner may explore what benefits such rules, regulations, and the policy change

might apply to the persons involved in the commercial quantity of charas (Cannabis). The policy change may open new possibilities for bail to the

persons involved in the commercial quantity of charas (Cannabis) by making out the new grounds for bail. Thus, it shall be open for the petitioner to

file a new bail petition pointing out the new grounds in the changed scenario if it happens. He may also file another application on changed

circumstances or with better particulars.

10. 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.

11. Given above, In the facts and circumstances peculiar to this case, the petition is dismissed. However, the petitioner shall be at liberty to file a new

petition on the same cause of action or different grounds.