
Neeraj @ Kobra Vs State Of Himachal Pradesh

Criminal Miscellaneous Petition (M) No. 1036 Of 2021

Court: High Court Of Himachal Pradesh

Date of Decision: June 29, 2021

Acts Referred:

Constitution Of India, 1950 " Article 21#Code Of Criminal Procedure, 1973 " Section 436, 436A, 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 20, 61, 85

Hon'ble Judges: Sandeep Sharma, J

Bench: Single Bench

Advocate: Dheeraj K. Verma, Sudhir Bhatnagar, Kunal Thakur

Final Decision: Disposed Of

Judgement

Sandeep Sharma, J

1. Bail petitioner, namely Neeraj alias Kobra, who is behind the bars since 23.3.2021, has approached this Court in the instant proceedings filed under

Section 439 of the Code of Criminal Procedure, praying therein for grant of regular bail in case FIR No.93 of 2021, dated 23.3.2021, under Sections

20-61-85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short "Act", registered at police Station, Nurpur, District Kangra,

Himachal Pradesh.

2. Respondent-State has filed the status report in terms of order dated 14.6.2021, perusal whereof reveals that on 23.03.2021, police party present at

place Hada near "Shanidev temple", stopped Scooty being driven by the present bail petitioner. Since, the bail petitioner after having seen the

police got perplexed, police conducted his personal search as well as of the Scooty in the presence of independent witnesses namely, Abhay Mankotia

and Deepak Kumar and allegedly recovered 112.89 grams of charas. Since, bail petitioner was unable to render plausible explanation qua the

possession of aforesaid quantity of contraband, police after completion of necessary codal formalities, lodged a FIR, detailed hereinabove, against the

present bail petitioner and since then he is behind the bars. Challan stands filed in the competent court of law and nothing remains to be recovered

from the bail petitioner and as such, he has approached this Court in the instant proceedings, praying therein for grant of regular bail during the

pendency of the trial.

3. Prior to filing of the petition at hand, petitioner had approached the learned Special Judge-II, Kangra by way of bail application No.120-

D/XXII/2021, but the same came to be rejected vide order dated 4.5.2021. Perusal of aforesaid order (Annexure P-1) reveals that factum with regard

to pendency of one case under NDPS Act weighed heavily with the Court while rejecting the bail petition filed on behalf of the bail petitioner.

4. Having heard learned counsel representing the parties and perused the material available on record, this Court finds it difficult to accept the

contention made on behalf of learned counsel representing the petitioner that petitioner has been falsely implicated because bare perusal of status

report clearly reveals that intermediate quantity of charas came to be recovered from the dicky of the Scooty being driven by the bail petitioner in the

presence of independent witnesses. However, having taken note of the fact that bail petitioner has already suffered for three months coupled with the

fact that challan stands filed in the competent court of law, this Court finds considerable force in the submission made by learned counsel for the bail

petitioner that in case, bail petitioner is allowed to remain behind the bars for indefinite period, it would amount to pre-trial conviction.

5. Mr. Kunal Thakur, learned Deputy Advocate General while fairly admitting factum with regard to filing of the challan in the competent court of

law, contends that though nothing remains to be recovered for the bail petitioner, but keeping in view the gravity of offence alleged to have been

committed by him, he does not deserves any leniency. While referring to the status report, Mr. Thakur, contends that since one case under the Act

ibid already stands registered against the bail petitioner, he is not entitled to any kind of discretionary relief, as prayed for in the instant petition.

6. No doubt, record/status report reveals that in past one case under the Act ibid stands registered against the bail petitioner, but mere pendency of the

case cannot be made basis to reject the prayer made in the instant petition, especially when there is nothing on record suggestive of the fact that bail

petitioner is of drug peddler, rather it appears that bail petitioner has become drug addict and is required to be taken to some rehabilitation centre at

first opportunity, so that efforts are made for bringing the bail petitioner to the main stream. Apart from above, no material, worth credence, has been

led on record by the Investigating Agency suggestive of the fact that in the event of petitioner's being enlarged on bail, he may flee from the

justice. This Court is fully conscious of the fact that offence, if any, committed under this Act ibid is heinous crime having adverse impact on the

society, but as has been noticed hereinabove, rigours of Section 37 of the Act *ibid* are not attracted in the present case keeping in view the

intermediate quantity of contraband alleged to have been recovered from the possession of the bail petitioner.

7. Leaving everything aside, guilt, if any, of the bail petitioner is yet to be proved in accordance with law, as such, this Court sees no impediment in

accepting the prayer for enlargement on bail made on behalf of the bail petitioner.

8. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, *Dataram Singh vs. State of Uttar Pradesh & Anr* decided on 6.2.2018 has held

that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the

Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

“2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent

until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific

offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of

our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever

expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that

more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial

discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally

there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person

perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an

accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed.

Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was

not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding

due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also

necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such

offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even

Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to

incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused

person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor

that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social

and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*.¹

9. In *Sanjay Chandra versus Central Bureau of Investigation (2012)*¹ Supreme Court Cases 49, Hon'ble Apex Court has held that gravity alone cannot

be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been

repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount

of bail. The object of bail is neither punitive nor preventative.

10. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the

question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of

bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment,

which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

11. The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010)* 14 SCC 496, has laid down the following principles to be

kept in mind, while deciding petition for bail:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

12. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Bail petitioner is ordered to be

enlarged on bail, subject to furnishing bail bonds in the sum of Rs.50,000/- with one local surety in the like amount, to the satisfaction of the learned

trial Court, with following conditions:

(a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of

hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from

disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender passport, if any, held by him.

13. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to

move this Court for cancellation of the bail.

14. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of

this petition alone. The petition stands accordingly disposed of.