

(2022) 04 SHI CK 0034

High Court Of Himachal Pradesh

Case No: Criminal Miscellaneous Petition (Main) No. 550 Of 2022

Ringu Ram

APPELLANT

Vs

State Of Himachal
Pradesh

RESPONDENT

Date of Decision: April 18, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 439
- Narcotic Drugs And Psychotropic Substances Act, 1985 - Section 20, 29, 37

Hon'ble Judges: Vivek Singh Thakur, J

Bench: Single Bench

Advocate: Lovneesh Thakur, Divya Sood

Final Decision: Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court seeking bail under Section 439 Code of Criminal Procedure (in short "Cr.P.C."), in case FIR No.6 of

2021, dated 10.01.2021, registered in Police Station Padhar, District Mandi, H.P., under Sections 20 and 29 of the Narcotic Drugs and Psychotropic

Substances Act, 1985 (hereinafter referred to as "NDPS Act").

2. Status report stands filed, wherein details, in which petitioner alongwith co-accused Hari Singh was apprehended for alleged possession of charas

weighing about 1 kilogram, have been narrated in detail. After seizing the contraband and registration of FIR on sending Rukka to the Police Station,

petitioner was arrested on 10.01.2021 and since then he is behind the bars and at present is in judicial custody after remaining in police custody during

interrogation and investigation at initial stage.

3. As per prosecution case, on noticing the police, petitioner Ringu Ram had handed over a bag to co-accused Hari Singh and both of them had

attempted to flee from spot, but, they were overpowered by the police, whereupon, co-accused had thrown the bag down the road. Police party, after

chasing them, had asked reasons for running from the spot and contents of the bag but they could not explain satisfactorily, whereupon, bag was

searched wherefrom contraband i.e. charas about 1 kilogram was recovered.

4 Learned counsel for the petitioner has submitted that as per prosecution, at the time of recovery, weight of recovered contraband was found to be

1.004 kilogram, whereas, in the State Forensic Science Laboratory (in short SFSL) weight of contraband was recorded as 0.979 kilogram and

further that trial Court has framed charge alleging recovery of 1.009 kilogram charas from the petitioner and, therefore, he has submitted that benefit

of this discrepancy is to be extended to the petitioner, at least for considering his case for grant of bail by considering the alleged contraband of

intermediate quantity and without applying rigors of Section 37 of NDPS Act.

5 It has been further submitted by learned counsel for the petitioner that petitioner is behind the bars since last about 15 months whereas co-accused

Hari Singh has been enlarged on bail vide order dated 4.3.2022, passed in Cr.MP(M) No. 128 of 2022 by this Court, and therefore, prayer for

enlarging the petitioner, on parity, has also been advocated.

6 Learned Additional Advocate General has submitted that weight mentioned in recovery memo as well as by the trial Court is weight of the

contraband alongwith polythene carry bag and there is no discrepancy in the weight of the recovered contraband as SFSL has mentioned weight of

the contraband without carry bag.

7 Be that as it may, it is an admitted fact that SFSL has mentioned weight of contraband as 0.979 kilogram which is less than commercial quantity.

Therefore, rigours of Section 37 of NDPS Act are not applicable in the present case. Taking into consideration circumstances, quantum of recovered

contraband and period of detention, I find at this stage, petitioner can be enlarged on bail.

8 Accordingly, present petition is allowed and petitioner is directed to be enlarged on bail, subject to his furnishing personal bond in the sum of

Rs.1,00,000/-with one surety in the like amount to the satisfaction of the trial Court, upon such further conditions as may be deemed fit and proper by

the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioner/accused at the time of trial:-

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

(ii) that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as

to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or

influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by

prosecution;

(viii) that the petitioner shall not leave the territory of India without prior permission; and

(ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if

any, in future.

9 It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary

in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or

further condition on the petitioner as it may deem necessary in the interest of justice.

10 In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach

the competent Court of law for cancellation of bail, in accordance with law.

11 Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139

dated 18.03.2013.

12 Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of

the bail application.

Petition is disposed of in aforesaid terms.

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Petitioner is permitted to produce a copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities

concerned, and the said authorities shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.