
Kashish Gulyani Vs State Of Himachal Pradesh

Criminal Miscellaneous Petition (Main) No. 211 Of 2023

Court: High Court Of Himachal Pradesh

Date of Decision: Feb. 7, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 19, 22, 24, 27A, 37, 37(1)(b)

Hon'ble Judges: Sushil Kukreja, J

Bench: Single Bench

Advocate: Abhishek Barowalia, Pushpender Singh Jaswal

Final Decision: Dismissed

Judgement

Sushil Kukreja, J

1. By way of instant petition, filed under Section 439 of the Criminal Procedure Code, the petitioner is seeking bail in case FIR No. 215/2022, dated

26.06.2022, registered at Police Station Kullu, District Kullu, H.P., under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985

(hereinafter referred to as "NDPS Act").

2. The prosecution story, in brief, is that on 26.06.2022 a rukka was received from Police Post Manikaran at Police Station Kullu and it was informed

that one Hemant Tomar, Manager of Apple Garden Valley Cafe at Village Shilha was indulging in sale of illicit liquor in his Cafe. On the aforesaid

information, the police party reached the said Cafe at about 2:40 a.m. and search of the Cafe was conducted. ASI Jai Singh opened one of the rooms

of the Cafe, where one person was sitting on the cot, who on noticing the police got perplexed. The said person immediately picked up one bag from

his lap and started hiding the same behind his back under a pillow. In the meantime, one person was noticed walking on the road, who was called by

ASI Jai Singh and on inquiry, he disclosed his name as Purshotam Thakur. The person, who was sitting on the cot in the room, disclosed his name as

Kashish Gulayani (petitioner herein). On inquiry regarding the bag, the petitioner could not give any satisfactory answer. The said bag was checked

and on opening the zip of front small pocket of the bag, transparent packets were found. On opening the said packets, white coloured crystal shaped

substance was found in four packets and in one packet some multi coloured papers were found. On checking the substance in all five packets, the

substance in four packets was found to be MDMA, in fifth packet it was found to be LSD. On weighing, MDMA was found to be 6.43 grams,

whereas the weight of LSD paper was found 0.18 grams. The police also found Rupees 2,09,000/₹, brown colour purse, Aadhar Card, Credit Card,

one ATM, one cigarette packet and pink colour 76 coupons of Mahakal Valley events. Consequently, FIR, as detailed hereinabove, was registered

against the petitioner and he was arrested.

3. Learned counsel for the petitioner has contended that the petitioner is innocent and has been falsely implicated in this case. He has further

contended that keeping in view the age of the petitioner i.e. 24 years, if he is not enlarged on bail, his entire career will be ruined.

He has also contended that investigation in this case is almost complete and nothing remains to be recovered at the instance of the petitioner and as

such, the petitioner, who is in custody since his arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate General opposed the bail application on the ground that keeping in view the quantity of the contraband

alleged to have been recovered from the petitioner, he is not entitled to be enlarged on bail.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the

case and I am of the firm opinion that the petitioner has not made out a case for grant of bail, as a perusal of the record indicates that the petitioner

was arrested for possessing 6.43 grams of MDMA (Methamphetamine), which is an intermediate quantity and 0.18 grams of LSD (Lysergide) paper,

which is commercial quantity.

6. In Criminal Application (Bail) No. 752/2021, titled H.S. Arun Kumar Vs. The State of Goa, 2022 Live Law (Bom) 432, it has been held that a

blotter paper forms an integral part of L.S.D. (drug) when put on it for consumption and, as such, the weight of the blotter paper containing L.S.D. will

have to be considered for determining a small or commercial quantity of the offending drug under the NDPS Act, 1985. The relevant paragraphs of

the aforesaid judgment are reproduced as under:~

“113. For all the above reasons, we hold that a blotter paper forms an integral part of L.S.D. (drug) when put on it for consumption and, as such,

the weight of the blotter paper containing L.S.D. will have to be considered for determining a small or commercial quantity of the offending drug under

the NDPS Act, 1985. Further, we also hold that the blotter paper that carries the drug (L.S.D. drops), which facilitates its consumption as a whole, is

a preparation, mixture, or neutral substance within the meaning of the NDPS Act 1985.

115. In conclusion, therefore, we endorse the view taken in Anuj Keshwani (supra) that the combined weight of the L.S.D. and the blotter is relevant

to determine small or commercial quantities and not the view in Hitesh Malhotra (supra) and Harsh Meshram (supra) that only the weight of the pure

L.S.D. is the determinative factor. The reference is answered accordingly.Ã¢â€â€

7. In the instant case, since the quantity of the LSD (Lysergide) paper recovered is 0.18 grams, which falls within the definition of commercial

quantity, therefore, the grant of the bail in this case is governed by the provision of Section 37 of the NDPS Act, which reads as under:Ã¢â€â€

37. Offences to be cognizable and nonÃ¢â€â€ailable.Ã¢â€â€ (1) Notwithstanding anything contained in the code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving

commercial quantity] shall be released on bail or on his own bond unlessÃ¢â€â€

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, reasonable grounds for believing that he is not guilty of such offence and that he is not likely

to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subÃ¢â€,section (1) are in addition to the limitations under the Code of Criminal Procedure,

1973 (2 of 1974) or any other law for the time being in force, on granting of bail.Ã¢â€â€

8. The HonÃ¢â€â€ble Apex Court in the matter of The State (NCT of Delhi) Narcotics Control Bureau Vs. Lokesh Chadha, (2021) 5 Supreme Court

Cases 724, has held that no person accused for offences involving a commercial quantity shall be released on bail, where the public prosecutor

opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is

not likely to commit any offence while on bail. The relevant portion of the said judgment is reproduced hereunder:Ã¢â€â€

Ã¢â€â€9. Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.Section 37 of the NDPS Act stipulates that no person accused of an offence punishable for offences under Section 19 or Section 24 or

Section 27Ã¢â€,A and also for offences involving a commercial quantity shall be released on bail, where the public prosecutor opposes the application,

unless the Court is satisfied Ã¢â€â€that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit

any offence while on bailÃ¢â€â€.Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.Ã¢â€â€.

9. Thus, in view of the aforesaid decision of HonÃ¢â€â€ble Apex Court, unless the conditions as laid down under Section 37 of the NDPS Act are

satisfied, the bail cannot be granted to an accused, who has been found in possession of the commercial quantity of LSD (Lysergide) paper, i.e. 0.18

grams, under the provisions of the NDPS Act. Moreover, the limitations on granting of bail specified in clause (b) of sub-~~section~~ (1) of Section 37 of

the NDPS Act are in addition to the limitations under the Code of Criminal Procedure. In the instant case, though the quantity of MDMA

(Methamphetamine) recovered is 6.43 grams, which is an intermediate quantity, but the quantity of LSD (Lysergide) recovered is 0.18 grams, which is

a commercial quantity, however the petitioner has failed to satisfy the conditions for grant of bail, as provided under Section 37 of the NDPS Act.

Merely because of the fact that he is in custody for the last more than six months is not a ground to override the mandatory provisions of Section 37 of

the NDPS Act. Hence, for the reasons mentioned above, the bail application filed by the petitioner is dismissed.

10. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court

will not be influenced by any observations made therein.