

Rohit Budhathoki Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: May 26, 2023

Acts Referred: Code Of Criminal Procedure, 1973 " Section 439
Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 21, 37

Hon'ble Judges: Sushil Kukreja, J

Bench: Single Bench

Advocate: Ajay Kochhar, Vivek Sharma, Pranay Pratap Singh

Final Decision: Allowed

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 F.I.R. No. 127/2022, dated

20.07.2022, registered at Police Station Sadar-Solan, District Solan, H.P., under Section 21 of Narcotic Drugs and Psychotropic Substances Act

(hereinafter referred to as "NDPS Act").

2. The prosecution story, in brief, is that on 20.07.2022, a police party was on routine patrolling duty and at about 9:30 P.M., reached at place Dohri

Deewar, where they received a secret information that Rohit resident of Nepal is coming from Kaaylar side to Dohri Deewar side for selling chitta to

some person. The police associated one Avdhesh as an independent witness in the proceedings and they started waiting for the person about 150

meters ahead of Dohri Deewar . At about 10:30 P.M., the police party saw a Nepali resident coming towards them, who was stopped by them and on

asking, disclosed his name as Rohit (petitioner herein). The police checked the bag of the petitioner and on opening the same, a plastic packet was

recovered, which was containing light brown coloured substance, which on the basis of experience was found to be chitta/heroin. On weighing, the

recovered contraband was found to be 49.50 grams. Thereafter, the police completed all the codal formalities and FIR as detailed hereinabove was

registered against the petitioner and he was arrested.

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

contended that investigation in this case is complete and nothing remains to be recovered at the instance of the petitioner, as such, the petitioner, who

is only 27 years of age and is in custody for the last more than 10 months, is required to be released on bail, as no fruitful purpose would be served by

keeping him behind the bars for an unlimited period.

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

alleged to have been committed by the petitioner, he is not entitled to be enlarged on bail. He further contended that the petitioner is a habitual

offender and two more cases under the NDPS Act have been registered against him at Police Station, Sadar-Solan, District Solan, H.P., as such, he

does not deserve to be released on bail.

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

case. The perusal of the record indicates that the quantity of chitta/heroin, involved in the present case is 49.50 grams, which is an intermediate

quantity, therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case.

6. The learned Additional Advocate General contended that two more cases in past under the NDPS Act have been registered against the petitioner,

i.e. FIR No. 313/2018 and FIR No. 148/2019 at Police Station Sadar-Solan, District Solan, H.P. and he is not entitled to be released on bail, as he is a

habitual offender. However, this contention of the learned Additional Advocate General cannot be accepted, as registration of some cases in the past

against the petitioner is no ground to deny bail to him in the present case, as guilt of the petitioner in those cases is yet to be proved and those cases

shall be decided by the concerned Court(s) on their own merits. In Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another,

(2012) 2 Supreme Court Cases 382, it has been held that merely on the basis of criminal antecedents, the claim of the bail cannot be rejected as it is

the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of

fleeing away from the jurisdiction of the Court etc. Relevant portion of the aforesaid judgment reads as under:-

“10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in

dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of

criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the

accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”

7. In the instant case, the petitioner was arrested on 20.07.2022 and since then he is behind the bars. The trial in the case is yet to commence, which

may take sufficiently long time to conclude, as such, no fruitful purpose will be served if the petitioner is kept behind the bars for an unlimited period.

8. Considering the overall facts and circumstances of the case, since the quantity of chitta/heroin involved in this case is 49.50 grams, which is an

intermediate quantity, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in

his favour. The possibility of the accused influencing the investigation, tampering with evidence and the likelihood of fleeing from justice, can be taken

care of by imposing elaborative and stringent conditions. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been

arrested by the police, in case F.I.R. No. 127/2022, dated 20.07.2022, registered at Police Station Sadar-Solan, District Solan, H.P., under Section 21

of NDPS Act, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs. 1,00,000/-(Rupees one lac), with one local

surety in the like amount to the satisfaction of learned Trial Court. This bail order is subject, however, to the following conditions:-

(i) that the petitioner will appear before the Court and the Investigating Officer whenever required ;

(ii) that he will 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/her from disclosing any facts to the Court or the police;

(iii) that he will not tamper with the prosecution evidence nor he will try to win over the Prosecution witnesses or terrorise them in any manner;

(iv) that he will not repeat the offence, as is alleged to have been committed by him.

(v) that he will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.

(vi) that he will not leave India without prior permission of the Court.

9. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is

violated by the petitioner.

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.