
Rohit Kumar And Others Vs State Of Himachal Pradesh

Criminal Miscellaneous Petition (Main) No. 1862, 1863 Of 2023

Court: High Court Of Himachal Pradesh

Date of Decision: Aug. 25, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 8(C), 21, 29, 37

Hon'ble Judges: Sushil Kukreja, J

Bench: Single Bench

Advocate: Ashok Tyagi, Sanjeev Kumar Suri, Jitender Sharma

Final Decision: Allowed

Judgement

Sushil Kukreja, J

1. Since both the bail petitions arise out of an FIR No. 60/2023 dated 12.05.2023, they have been heard together and are being disposed of by this

common order.

2. By way of instant petitions, filed under Section 439 of the Criminal Procedure Code, the petitioners are seeking bail in case F.I.R. No. 60/2023,

dated 12.05.2023, registered at Police Station Gagret, District Una, H.P., under Sections 21, 29 & 8(C) of the Narcotic Drugs and Psychotropic

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

3. The prosecution story, in brief, is that on 12.05.2023 a secret information was received that a vehicle, bearing registration No. HP22B-9799 was

coming from Hoshiarpur through Ambota by-pass, in which, two persons were travelling, who were carrying chitta/heroin with them and if their

vehicle was stopped and searched, huge quantity of chitta/heroin could be recovered. Accordingly, the police party laid nakka at Shiv Bowdi Chowk

and associated Rakesh Kumar and Ramjan as independent witnesses in the proceedings. At about 8:15 P.M., the police party saw vehicle No.

HP22B-9799 coming from Hoshiarpur through Ambota by-pass, which was signaled to stop. On asking, the person sitting on driver seat of the vehicle

disclosed his name as Rohit Kumar, whereas, the person sitting on co-driver seat of the vehicle disclosed his name as Manish Kumar. During search

of the aforesaid vehicle, when its dashboard was opened, the police found a cigarette packet and on opening the same, a light brown coloured

substance was recovered, which was chitta/heroin. On weighing, it was found to be 11.51 grams. Thereafter, the police completed all the codal

formalities and FIR as detailed hereinabove was registered against the accused persons and they were arrested.

4. The bail petitions have been filed on the ground that the petitioners are innocent and have been falsely implicated in this case. Learned counsel for

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

they are required to be released on bail.

5. Per contra, 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 petitioners, they are not entitled to be enlarged on bail. He further contended that petitioner Rohit Kumar is habitual

offender and one more case under NDPS Act at Police Station Sadar-Hamirpur, District Hamirpur, H.P, has been registered against him, as such, he

does not deserve to be released on bail.

6. I have heard the learned counsel for the petitioners as well as 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 11.51 grams, which is an intermediate

quantity. Therefore, rigors of Section 37 of the NDPS Act are not applicable in the present case. The petitioners were arrested on 12.05.2023 and

since then they are behind the bars. There is no evidence on record to suggest that the petitioners will tamper with the prosecution evidence or will

flee from justice, if released on bail. Moreover, the trial may take sufficiently long time to conclude, therefore, no fruitful purpose will be served if the

petitioners are kept behind the bars for an unlimited period.

7. The learned Additional Advocate General contended that petitioner Rohit Kumar is a habitual offender as one more case under the NDPS Act has

been registered against him, therefore, he is not entitled to be released on bail. However, this contention of the learned Additional Advocate General

cannot be accepted, as registration of some case in the past against the petitioner is no ground to deny bail to him in the present case, as the said case

will be decided by the concerned Court on its own merits. In Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another,

MANU/SC/0029/2012: (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.

8. Considering the overall facts and circumstances of the case and since the quantity of heroin involved in this case is 11.51 grams, which is an

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

their favour. Accordingly, the bail applications are allowed and it is ordered that the petitioners, who have been arrested by the police, in case F.I.R.

No. 60/2023, dated 12.05.2023, registered at Police Station Gagret, District Una, H.P., under Sections 21, 29 & 8(C) of NDPS Act, shall be forthwith

released on bail, subject to their furnishing personal bond to the tune of Rs. 1,00,000/- (Rupees one lac) each, with one surety in the like amount each,

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

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

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

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

(vi) that they 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 petitioners.

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.