

Kans Raj Vs State of Himachal Pradesh

Court: High Court of Himachal Pradesh

Date of Decision: July 21, 2016

Acts Referred: Criminal Procedure Code, 1973 (CrPC) - Section 436
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21

Citation: (2016) 4 HimLR 2134

Hon'ble Judges: Mr. Dharam Chand Chaudhary, J.

Bench: Single Bench

Advocate: Mr. D.S. Nainta and Mr. Virender Verma, Addl. AGs. ASI Rajinder Kumar, P.S. Indora, District Kangra, in person, for the Respondent/State; Mr. Gaurav Sharma, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

Dharam Chand Chaudhary, J. (Oral)â€”Petitioner is an accused in FIR No. 86/16 registered under Section 21 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as the "NDPS Act" in short) in Police Station, Indora, District Kangra, H.P.

2. The police party headed by ASI Rajinder Kumar has nabbed the accused on 2.3.2016 at such a time when he was coming from Meerthal

bridge and going towards village Milwan. On seeing the police, he tried to turn back. This has resulted in suspicion that the accused-petitioner may

be in possession of ""Heroin"" a narcotic drug. He was apprehended and his search was conducted after giving him option qua exercise of his legal

right of being searched before a nearby Magistrate or a gazetted officer in the presence of the independent witnesses. He allegedly opted for being

searched by the police present at the spot. When his search conducted in the presence of independent witnesses Heroin kept in a white coloured

polythene pack was recovered from right side pocket of his trouser. On weighing the recovered drug, it was found 1.5 grams including the weight

of polythene packet. After resorting to sealing process and seizure of the drug allegedly recovered from the accused-petitioner and also complying

with other provisions of the Act, the accused-petitioner was arrested. Since learned Special Judge has dismissed the application he filed for the

grant of bail vide Annexure A-1 to this petition, therefore, the accused-petitioner is still in judicial custody.

3. Learned Additional Advocate General has strenuously contended that in view of three more cases having been registered against the

accused-petitioner under the provisions of NDPS Act, whereas in one of the case under the Excise Act he has already been convicted, learned

Special Judge, Kangra at Dharamshala has rightly dismissed the application he filed for grant of the bail. On the other hand, learned defence

Counsel has come forward with the version that in view of the present is a case of recovery of small quantity of drug allegedly recovered from the

accused-petitioner and that as per Section 21 of the Act in the event of he is ultimately held guilty can only be sentenced to imprisonment for a

period not exceeding one year, he could have not been detained in custody and rather released on bail.

4. As a matter of fact, the rigor of Section 37 of the Act is not attracted in this case for the reason that stringent condition for grant of bail

prescribed under Section 37(1)(b) are applicably only to those offences punishable under Section 19, 24 and 27A as well as the offences involving

"commercial quantity". The conditions in Section 37 do not apply to any other offence. The accused-petitioner has been booked for the

commission of an offence under Section 21 of the NDPS Act. The quantity of the drug allegedly Heroin recovered from him is small quantity.

Therefore, the present being a case under Section 21 of the NDPS Act and pertains to the alleged recovery of Heroin in small quantity, he is

entitled to be admitted on bail in terms of Section 436 of the Code of Criminal Procedure. I am drawing support in this regard from the judgment

of High Court of Delhi dated 8.5.2012 in WP(CRL) 338/2012 & CRL.M.A. 2824/2012 titled Minnie Kadim Ali Kuhn v. State NCT of

Delhi & Ors.

5. No doubt, there are three more cases registered under the NDPS Act against the accused-petitioner, whereas he has been convicted in one of

the case which was registered against him, under the Excise Act. However, in view of the legal position discussed herein above, the

registration/pendency of such cases against him is hardly of no consequence so far as his legal right to be admitted on bail in this case is concerned.

The application as such is allowed. Consequently, the accused-petitioner, who has been arrested in connection with FIR No. 86/16, under Section

21 of the NDPS Act, Police Station, Indora District Kangra is ordered to be released on bail subject to his furnishing personal bond in the sum of

Rs. 25,000/- with one surety in the like amount to the satisfaction of learned Special Judge (Sessions Judge) Kangra at Dharamshala. The

accused-petitioner, however, shall abide by the following conditions:

That he shall:-

a. not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

b. not make any inducement, threat or promise 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

c. not leave the territory of India without the prior permission of the Court.

6. It is clarified that if the accused-petitioner misuses his 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.

7. The observations herein above shall remain confined to the disposal of this petition and have no bearing on the merits of the case. The

application stands disposed of.