

**(2016) 07 SHI CK 0073**

**High Court of Himachal Pradesh**

**Case No:** Cr.MP(M) No. 860 of 2016

Kans Raj

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

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**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

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### **Judgement**

**Dharam Chand Chaudhary, J.** (Oral)—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.