
(2016) 09 SHI CK 0073

High Court of Himachal Pradesh

Case No: Cr.MP(M) No. 1044 of 2016

Sher Bahadur Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: Sept. 20, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 439
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, Section 37

Citation: (2016) sup HimLR 2791

Hon'ble Judges: Mr. P.S. Rana, J.

Bench: Single Bench

Advocate: Mr. M.L. Chauhan Additional Advocate General, for the Non-Petitioner; Ms. Leena Guleria, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

P.S. Rana, J. - Present bail application is filed under section 37 Narcotic Drugs and Psychotropic Substances Act 1985 read with section 439 Code of Criminal Procedure 1973 for grant of bail to petitioner relating to FIR No. 83 of 2016 dated 15.4.2016 registered under Section 20 of ND&PS Act 1985 at P.S. Kullu District Kullu H.P.

Brief facts of the case

2. It is alleged that on 15.4.2016 police officials headed by HC Suraj Thakur were present at place known 1 as Shangan bridge in connection with routine patrolling and traffic checking. It is alleged that police officials noticed accused sitting on parapet. It is also alleged that when accused saw the police officials he threw some object down the road. It is further alleged that in presence of independent witnesses object thrown lifted and in a bag 814 grams of cannabis (Charas) found. As per police report investigation completed

and challan stood filed before learned Special Judge Kullu and is fixed for prosecution evidence on 29.9.2016.

3. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the non-petitioner and also perused the record.

4. Following points arise for determination in this bail application:-

1. Whether bail application filed by petitioner is liable to be accepted as mentioned in memorandum of grounds of bail application?

2. Final Order.

Findings upon Point No.1 with reasons

5. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and petitioner did not commit any criminal offence as alleged by investigating agency cannot be decided at this stage. Judicial findings relating to innocence of accused or not would be given by learned Trial Court after giving due opportunity to both the parties to lead evidence in support of their case.

6. Submission of learned Advocate appearing on behalf of the petitioner that investigation is completed and charge sheet already stood filed and recovered quantity is less than commercial quantity and on this ground petitioner is legally entitled to be released on bail is accepted for the reasons hereinafter mentioned. Bail in narcotic drugs and psychotropic substances cases is governed by Section 37 of ND&PS Act 1985. Bail relating to recovery of contraband less than commercial quantity is permissible under law. It is well settled law that accused is presumed to be innocent till convicted by competent Court of law. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) Character of evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. See AIR 1978 SC 179 titled *Gurcharan Singh and others v. State (Delhi Administration)*. Also see **AIR 1962 SC 253 titled *The State v. Captain Jagjit Singh***. It is well settled law that object of bail is to secure the appearance of the accused person at his trial. It is well settled law that grant of bail is rule and committal to jail is exceptional. Refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. Accused should not be kept in jail for an indefinite period. See **2012 Cri. L.J. 702 Apex Court DB 702 titled *Sanjay Chandra v. Central Bureau of Investigation***.

7. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if bail is granted to petitioner then petitioner will induce and threat the prosecution witnesses and on this ground bail application be declined is rejected being

devoid of any force for the reasons hereinafter mentioned. Court is of the opinion that conditional bail will be granted to petitioner. Court is of the opinion that if petitioner will flout the terms and conditions of conditional bail order then non-petitioner will be at liberty to file application for cancellation of bail in accordance with law.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that accused is resident of Nepal and if bail is granted to accused then trial of case would be hampered and petitioner would leave India and on this ground bail application be dismissed is rejected being devoid of any force for the reasons hereinafter mentioned. There is recital in bail petition that petitioner is residing at village Karol near Manikaran for the last so many years and there is recital in petition that petitioner would furnish local sureties for release and there is also recital in petition that petitioner would not leave District Kullu till the conclusion of trial by learned Trial Court. If petitioner will flout terms and conditions of bail order then prosecution will be at liberty to file application for cancellation of bail as per section 439(2) Code of Criminal Procedure 1973. In view of undertaking given by petitioner Court is of the opinion that it is expedient in the ends of justice to allow the bail application. In view of above stated facts point No.1 is answered in affirmative.

Point No.2 (Final order)

9. In view of findings upon point No.1 bail application filed by petitioner under Section 37 of NDPS Act 1985 read with section 439 Cr.P.C. is allowed subject to furnishing personal bond to the tune of Rs. 5 lac (Rupees five lacs only) with two local sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That petitioner will attend the proceedings of learned Trial Court regularly till conclusion of trial of case. (ii) That petitioner 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 such facts to the Court or to any police officer. (iii) That petitioner will not leave District Kullu (Himachal Pradesh) without the prior permission of the Court. (iv) That petitioner will not commit similar offence qua which he is accused.

10. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of bail application filed under section 37 of NDPS Act 1985 read with section 439 of Code of Criminal Procedure 1973. Bail petition filed under section 37 of NDPS Act 1985 read with section 439 of Code of Criminal Procedure stands disposed of. All pending application(s) if any also disposed of.