

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2012 of 2020

Reserved on 08.12.2020

Decided on: 14.12.2020

Khem ChandPetitioner
Versus
State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

(Through video conference)

For the petitioner: Mr. Mandeep Chandel, Advocate.

For the respondent/State: Mr. Gaurav Sharma, Deputy Advocate
General.

Chander Bhusan Barowalia, Judge.

The matter is taken up through video conference.

2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release, in case FIR No. 290 of 2018, dated 21.11.2018, under Section 20 of the ND&PS Act, registered in Police Station Kullu, District Kullu, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

4. Police report stands filed. As per the prosecution story, on 21.11.2018, a police team was on routine patrol duty and at about 05:00 p.m., near Hotel HHH, police spotted a person coming from Jari towards Kasol bazaar and he was carrying a bag. On seeing police, the said person took a slew and started walking hastily. On suspicion, the said person was nabbed by the police and asked as to why he was trying to flee, but he could not answer satisfactorily and seemed baffled. Police associated Shri Dile Ram as an independent witness and in his presence the nabbed person disclosed his name as Khem Chand (petitioner herein) and the bag, which was being carried by him, was checked, which contained a carry bag stuffed with *charas* and on weighment it was found to be 1 kg and 28 grams. Thereafter, the police complete all the codal formalities. Police prepared the spot map, recorded the statements of the witnesses and arrested the petitioner. During the course of investigation, the petitioner divulged that he had extracted the *charas* from the cannabis plants grown naturally near his home and he was coming to Kasol with in intention to sell the *charas* to the tourists. The recovered contraband, upon chemical examination, found to be extract of cannabis. As per the police, after completion of investigation, *challan* was presented in the learned Trial Court.

Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found involved in a serious offence. The petitioner, at this stage, in case enlarged on bail, may tamper with the prosecution evidence and may flee from justice, so the bail application may be dismissed.

5. I have heard the learned Counsel for the petitioner, learned Deputy Advocate General for the State and gone through the record, including the police report, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is permanent resident of the place, thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when nothing remains to be recovered at his instance, investigation is complete, *challan* stands presented in the learned Trial Court, custody of the petitioner is not at all required by the police, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Deputy Advocate General has argued that the petitioner has committed a serious offence. He has further argued that the petitioner was nabbed by the police when he was in exclusive and conscious possession of 1 kg 28 grams of *charas*

and in case the petitioner is enlarged on bail, he may flee from justice, may tamper with the prosecution evidence and may again indulge in such activities. He has argued that the trial is yet to begin, so the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is permanent resident of the place, thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, nothing is to be recovered at his instance, custody of the petitioner is not at all required by the police, as the investigation is complete and *challan* stands presented in the learned Trial Court, so the application be allowed and the petitioner be enlarged on bail. In order to support his arguments, the learned counsel for the petitioner has placed reliance on a judgment of a coordinate Bench of this Court rendered in ***Sumit Jindal vs. State of Himachal Pradesh***, Cr.MP(M) No. 1772 of 2020, decided on 12.11.2020.

8. A perusal of the judgment referred to above shows that the same is not applicable to the facts of the present case, as the facts of the case in hand and that of the judgment above are divergent. Moreover, in bail petitions there can never be a straight-jacketed formula or fixed pre-drawn line of law for granting or refusing bail. Each and every petition, seeking bail, has to be seen with the

magnifying lenses of facts and circumstances of that particular case. The vital aspects in granting or refusing bail can be the possibility of accused's fleeing, in case the bail is granted, the possibility of the accused's tampering with the prosecution evidence, the gravity and seriousness of the offence, the manner in which the same is alleged to have been committed, stage of the trial etc. etc. and there may be innumerable other aspects/reasons for granting or refusing bail. Thus, no straight-lined formula can be adhered to in granting or refusing bail and each case has to be tested with the valuable aid of its own facts and circumstances, vis-à-vis, some other important aspects and law.

9. At this stage, this Court finds that *prima facie* the petitioner was in conscious and exclusive possession of 1 kg 28 grams of *charas*, which is a commercial quantity, the contraband was recovered from the bag being carried by the petitioner, thus, it cannot be presumed that the petitioner had no knowledge of the contraband kept inside the bag. This Court cannot shut its eyes to the fact that the trial is yet to begin and in case, at this stage, the petitioner is enlarged on bail, he may tamper with the prosecution evidence or may flee from justice and considering that the trial is yet to begin and the fact that it has come in the police investigation, that the petitioner was coming to Kasol with an intention to sell the contraband to the tourists, so there is possibility that in case the petitioner, if released on

bail, may indulge in such kind of activities again. Considering all the facets of the case and without discussing the same elaborately, at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

10. In view of what has been discussed hereinabove, the petition, which sans merits, deserves dismissal and is accordingly dismissed.

11. Needless to say that the observations made hereinabove are only confined to the adjudication of the instant petition and shall have no bearing on the merits of the main case, which shall be adjudicated on its own.

14th December, 2020
(virender)

(Chander Bhusan Barowalia)
Judge