

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. (M) No. 399 of 2021

Reserved on: 8.4.2021

Date of decision: 13.5.2021

Prem Bhadur.

...Petitioner.

Versus

State of Himachal Pradesh.

...Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Bhupinder Singh Ahuja, Advocate.

For the Respondent: Mr. Sunny Dhatwalia, Assistant Advocate General.

ASI Mangat Ram, Police Station Baijnath, was present in person on 8.4.2021.

Vivek Singh Thakur, Judge

Petitioner has been arrested on 26.8.2020 in case FIR No. 118 of 2020, dated 26.8.2020, registered in Police Station Baijnath, under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act) for accompanying main accused Ram Lal at 4:15 A.M. near village Kiori on Kiori-Sansal Road within jurisdiction of Police Station, Baijnath, from whose carry bag thrown on the road on seeing the Police party, 1.112 Kilograms charas was recovered. After remaining in Police custody for three days, petitioner is in judicial custody since 29.8.2020. Hence present petition under Section 439 Cr.P.C. has been filed seeking his enlargement on bail.

2. Status report stands filed, wherein details of circumstances, wherein petitioner along with co-accused Ram Lal was

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

apprehended under suspicion and 1.112 Kilogram charas was recovered from the carry bag in possession of Ram Lal, has been detailed. It is stated that petitioner and co-accused coming on Kiori-Sansal road at about 4:15 A.M. on 26.8.2020, had started running back after noticing Police party on the road and while trying to flee from the spot Ram Lal had thrown a carry bag on the side of road in the grass, whereupon Police party had chased and overpowered both accused and after calling an independent witness and associating a police official as a witness along with him, search and seizure of carry bag thrown by Ram Lal, was carried out wherefrom charas, referred supra, was recovered.

3. As per status report, challan has been presented in the Court on 30.10.2020 and case is pending consideration before the Special Judge for consideration of charge.

4. Learned counsel for the petitioner submits that only allegation against the petitioner is that he was accompanying main accused Ram Lal and there is no other allegation against him. It is submitted that petitioner is an Ambulance driver and is nothing to do with the charas alleged to have been recovered by the Police party, as claimed in the status report as well as in the challan. It is also submitted by learned counsel for the petitioner that as a matter of fact, nothing was recovered from the accused person as alleged and claimed by the Police party, as petitioner as well as co-accused are residents of different villages located in Tehsil Paddar, District Mandi, whereas as per claim of the prosecution, they were found walking together on a road in village Kiori, Tehsil Baijnath, District Kangra, H.P., located distinctly from the native places of accused persons that

too at 4:15 A.M. It is argued on behalf of petitioner that no cogent and reliable evidence has been found, which prima facie link the accused with the recovered contraband and in case entire story of prosecution is considered to be true, even then nothing was recovered from the petitioner and he has been roped under Section 29 of the NDPS Act improperly and falsely.

5. Learned counsel for the petitioner has further submitted that petitioner has no criminal history of commission of same or similar nature of offence and further that case of Police party is highly improbable, as it was impossible for the petitioner to reach on foot at the place of alleged recovery of contraband from a distinctly and distantly located native villages. Lastly, it is submitted that petitioner is behind the bars since 26.8.2020, i.e. for about 9 months, whereas recovery of alleged charas is slightly more than a commercial quantity of charas and, therefore, on this ground also prayer for releasing the petitioner on bail, has been made.

6. Considering the facts and circumstances as narrated in the prosecution story, including quantum of contraband recovered from the bag allegedly being carried by co-accused and period of detention, I am of the opinion that case of the petitioner can be considered differently than the main accused Ram Lal and at this stage, without commenting upon the merits of the claims and counter claims of prosecution and learned counsel for the petitioner/accused, petitioner can be enlarged on bail.

7. Accordingly, petitioner is ordered to be enlarged on bail, subject to furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of trial Court/Special Judge,

within four weeks from today and also subject to following further conditions:-

- (i) *That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;*
- (ii) *that the petitioner shall 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 Court or to any Police Officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;*
- (iii) *that the petitioner shall not obstruct the smooth progress of the investigation/trial;*
- (iv) *that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;*
- (v) *that the petitioner shall not misuse his liberty in any manner;*
- (vi) *that the petitioner shall not jump over the bail;*
- (vii) *that the petitioner shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during trial;*
- (viii) *that the petitioner shall not leave India without permission of the Court.*

8. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

9. In case the petitioner violates any conditions imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

10. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

11. Observations made in this petition hereinbefore shall not affect merits of the case in any manner and are strictly confined for the disposal of the bail application.

12. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.

Dasti copy on usual terms.

13th May, 2021
(Keshav)

(Vivek Singh Thakur),
Judge.