

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.31 of 2009.

Date of decision: 30.01.2009

Nand Lal

.... Petitioner

Vs.

State of Himachal Pradesh

.... Respondent

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the Petitioner : Mr.P.C. Sharma, Advocate.
Mr. D.R. Verma, Advocate

For the Respondent Mr. A.K. Bansal, Additional
Advocate General.

Kuldip Singh, Judge. (Oral)

This is an application under Section 439 Cr. P.C. for releasing the petitioner on bail, in FIR No. 103 of 2008, dated 26.12.2008, registered at Police Station, Arki, District Solan, H.P. under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985(for short **Act**). The status report has been filed. Heard and perused the record.

It has been submitted on behalf of the petitioner that the petitioner has been falsely implicated in the case showing alleged recovery of 250 gram charas from his shop. The petitioner was

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

arrested on 26.12.2008 and since then he is in custody. It has also been submitted that in view of the alleged recovery of 250 gram of charas, rigor of the Act is not applicable. The mandatory provision of the Act have not been complied for making the alleged recovery. The investigation in the case is almost complete. The continuous detention of the petitioner is no more required in the facts and circumstance of the case. The petitioner is ready to furnish bail bonds in accordance with the directions of this Court. The petitioner filed bail application which was dismissed by the learned Sessions Judge, Solan on 03.01.2009. The learned Counsel for the petitioner has prayed for grant of bail to the petitioner who is permanent resident of Village Batal, Tehsil Arki, District Solan.

Learned Additional Advocate General has opposed the bail application and has submitted that the recovery of charas weighing 250 grams was made from the conscious possession of the petitioner who is running a shop near to an educational institution. The petitioner was earlier prosecuted under the Act but was acquitted by the learned Additional Sessions Judge, (Fast Track Court), Solan on 29.03.2004. It has been submitted that it is not in the public interest to release the petitioner on bail.

I have considered the rival contentions of the either side. The petitioner was earlier prosecuted under the Act but he was acquitted. Therefore, in view of the acquittal of the petitioner in the earlier case, prosecution cannot take much benefit from the previous prosecution of the petitioner under the Act. The objection of the learned Additional Advocate General that the shop of the petitioner is near to the

educational institution is vague. According to the prosecution, the charas weighting 250 grams was recovered from the petitioner which is less than the commercial quantity. It has been submitted by the learned Additional Advocate General that in case the petitioner is released on bail, then he may influence the prosecution witnesses. This objection of the learned Additional Advocate General is also vague inasmuch as the conduct of the petitioner can be seen only if he is released on bail. In any case, in such a situation, law will take its own recourse. In the facts and circumstances of the case, the petitioner has made out a case for grant of bail to him under Section 20 of the Act, accordingly petition is allowed. The petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the learned Sessions Judge, Solan. The petitioner shall not hamper the investigation or tamper with the prosecution witnesses in any manner.

Copy Dasti on usual terms.

(Kuldip Singh)
Vacation Judge

January 30, 2009
(brb)