

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.820 of 2009

Date of decision: 29.9.2009

Chhotu Ram

.....Petitioner.

Vs.

State of H.P.

.... Respondent.

Coram

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

Whether approved for reporting? No

For the Petitioner : Mr.M.L.Brakta, Advocate

For the Respondent : Mr. R.P. Singh, Assistant Advocate General.

Kuldeep Singh, Judge.

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in FIR No.25 of 2009 dated 20.2.2009 registered at Police Station, Ani, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the 'Act').

The status report has been filed.

2. Heard and perused the record.

3. The prosecution case, in brief, against the petitioner is that on 20.2.2009 Head Constable Pune Ram and others were at Tuman Mor near Nagan Shawad road for nakabandi and they stopped vehicle No. CH-23-5653 which was being driven by Chhotu

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

Ram. Chhotu Ram has criminal history and, therefore, the vehicle and the person of Chhotu Ram was searched and Charas weighing 2 kg 800 grams was recovered from the vehicle. The sampling and sealing was done on the spot. The case was registered and the petitioner was arrested. In the status report, it has been submitted that in past 11 FIRs were registered against the petitioner in addition to FIR No. 25 of 2009 registered on 20.2.2009 at Police Station, Ani. Out of 11 FIRs, 10 FIRs are with respect to different offences under IPC but one FIR No. 57 of 2008 dated 7.2.2008 has been registered under the Act. It has also been stated that on the basis of aforesaid FIRs, some cases are still pending.

4. The learned counsel for the petitioner has submitted that as per Chemical Examiner report the quantity of resin found in the sample is 25.34% and therefore actual quantity of Charas comes to 709.52 grams, which is less than commercial quantity. The learned counsel for the petitioner has submitted that in these circumstances, rigor of Section 37 of the Act is not applicable and the petitioner is entitled to bail. He has also submitted that mere pendency of cases on the basis of some FIRs, is no ground to deny the bail to the petitioner in the present case.

5. The learned Assistant Advocate General while opposing the bail application has submitted that the petitioner has earlier filed bail application in the court of Special Judge, Rampur Bushahr which was withdrawn on 5.9.2009. There is no change of circumstances after the dismissal of the bail application of the petitioner on 5.9.2009 and in these circumstances, the petitioner is not entitled to bail. It has

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also been submitted that keeping in view the past history of the petitioner, he may not be granted bail as the petitioner is likely to commit again some offence under the Act. It has been submitted that in addition to the present case, an FIR has been registered against the petitioner on 7.2.2008 under the Act.

6. I have considered the rival contentions of the learned counsel for the parties. It has not been denied by the learned counsel for the petitioner that as many as 11 FIRs in addition to the present case have been registered against the petitioner and already one FIR has been registered against the petitioner under Section 20 of the Act in addition to present FIR. There is no denial of the fact that some cases have been decided but fact cannot be ignored that the petitioner has criminal history. The fact that a case under Section 20 of the Act in addition to the present case is pending against the petitioner cannot be ignored while considering the bail application of the petitioner. In the facts and circumstances of the case, the petitioner is not entitled to bail at this stage. Accordingly, the application is dismissed.

7. Any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

September 29, 2009.
(GR)

(Kuldip Singh)
Judge.