

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. M.P.(M) No. 41 of 2010

Date of decision: 29.01.2010

Shiva. ...Petitioner.

Versus

State of H.P. ...Respondent.

Coram

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

Whether approved for reporting? No

For the petitioner : Mr. M.S. Thakur, Advocate.

For the respondent : Mr. Anshul Bansal, Addl. A.G.

Kuldeep Singh, Judge. (Oral)

This is an application under Section 439 Cr.P.C. for grant of bail to the petitioner in case FIR No. 180 dated 26.10.2009 registered at Police Station Theog under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The status report has been filed.

2. Heard and perused the record. It has been submitted on behalf of the petitioner that petitioner is resident of Madrasi Colony, Ram Nagar, Karnal, Haryana. He has been arrested in the aforesaid case on 26.10.2009 and since then he is in custody. The petitioner is innocent. He has committed no offence. The investigation in the case is complete. The petitioner is ready to furnish the bail bonds in accordance with the directions of this court. The petitioner had earlier filed bail application, which has been rejected by learned Additional Sessions Judge, Fast Track Court, Shimla on 16.01.2010. The learned Additional Sessions Judge has not properly appreciated the material on record. The trial of the case may take some time.

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

3. *The bail application has been opposed by learned Additional Advocate General on the basis of status report. It has been submitted that the police was checking vehicles on 25.10.2009 at about 1:30 A.M. A person was sitting on seat No. 29 in Haryana Roadways bus No. HR-63A-8394 which was plying on Rampur-Delhi-Jhajjar route. The said person was having a bag. He was questioned but he could not give any proper answer. Later on he disclosed his name Shiva. The bag which that person had kept on his legs was checked and charas weighing 1 kg 800 gms was recovered from the bag. The sampling and sealing was done on the spot. The petitioner was arrested. As per State Forensic Science Laboratory report in the police file the quantity of resin as found in the Exhibit is 21.64% w/w. The exhibit is extract of cannabis and sample of charas.*

4. *I have considered the rival contentions of the learned counsel for parties. The prosecution case against the petitioner is that charas weighing 1 kg 800 gms was recovered from his bag. As per F.S.L report resin content in the sample is 21.64% w/w, therefore the quantity of charas in the stuff recovered from the petitioner comes to less than one kg, which is not a commercial quantity, therefore, rigour of Section 37 of the Act is not applicable. The investigation in the case is complete. The trial of the case will take some time. It is not the case of the Investigating Agency that petitioner was earlier involved in a case under the Act nor the prosecution has shown apprehension that in case the petitioner is released on bail then he will commit similar type of offence again. The prosecution has also not shown any apprehension that petitioner will terrorize the prosecution witnesses. In these circumstances, petitioner has made out a case for grant of bail, accordingly application is allowed. The petitioner is ordered to be released on bail in FIR No. 180 dated 26.10.2009 under Section 20 of*

Narcotic Drugs and Psychotropic Substances Act registered at Police Station Theog on his furnishing personal bond in the sum of Rs. 25,000/- with two sureties each of the like amount from District Shimla to the satisfaction of any Judicial Magistrate at Shimla with the condition that petitioner shall not hamper the investigation or tamper with the prosecution evidence in any manner. The observations made in this order are for the disposal of this application only and the same shall not be treated as expression of opinion on the merits of the case.

Copy dasti.

January 29, 2010
(Virender)

(Kuldip Singh),
Vacation Judge