

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No. 1407 of 2014

Order Reserved on 19th December, 2014

Date of Order 31st December, 2014

Vikky son of Sh. Ramesh Chand.Applicant

Versus

State of H.P.Non-applicant

Coram

The Hon'ble Mr. Justice P.S. Rana, J.

Whether approved for reporting?¹ Yes.

For the Applicant: Mr. Rajiv Rai, Advocate

For the Non-applicant: Mr. M.L. Chauhan, Additional
Advocate General with Mr. Puneet
Razta, Deputy Advocate General.

P.S. Rana, Judge.

Order:- Present bail application filed for releasing the applicant on bail qua FIR No. 254 of 2014 dated 23.10.2014 registered under Section 20-61 of Narcotic Drugs and Psychotropic Substance Act 1985 at Police Station Sadar District Hamirpur H.P.

2. It is pleaded that applicant is innocent and has been falsely implicated in the present case. It is further pleaded that mother of the applicant is patient of heart disease and is bed ridden and

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

required regular attendant. It is further pleaded that applicant will not tamper with prosecution evidence in any manner and it is further pleaded that applicant will abide by the conditions of bail order. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. There is recital in the police report that on dated 23.10.2014 at 4.00 p.m. applicant came near out gate of bus stand situated at Hamirpur (H.P.) and when applicant saw the police officials he tried to run away. There is further recital in the police that police officials caught the applicant and 240 g. charas was found in the exclusive and conscious possession of the applicant. There is further recital in the police report that charas was took into possession vide seizure memo and site plan was also prepared and statements of prosecution witnesses were recorded under Section 161 Cr.P.C. There is further recital in the police report that the contraband was re-sealed by SHO and NCB form was also filled. There is further recital in the police report that contraband was sent for chemical examination and as per the report of Chemical Examiner the contraband is cannabis and is sample of charas. There is further recital in the police report that challan already stood filed in the Court on dated 17.12.2014. There is further recital in the police report that if the applicant is released on bail then applicant will

induce and threaten prosecution witnesses. Prayer for rejection of bail application is sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State and also perused the record carefully.

5. Following points arise for determination in this bail application:-

Point No. 1

Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?

Point No. 2

Final Order.

Findings on Point No.1

6. Submission of learned Advocate appearing on behalf of applicant that applicant is innocent and he did not commit any offence cannot be decided at this stage. Same facts will be decided by learned trial Court after giving due opportunity to both the parties to adduce evidence in support of their case.

7. Another submission of learned Advocate appearing on behalf of the applicant that challan already stood filed in the Court and the alleged quantity recovered from the possession of the applicant is less than commercial quantity and applicant will abide by terms

and conditions imposed by the Court and on this ground bail application filed under Section 439 Cr.P.C. be allowed is accepted for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. ***See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration).*** Also see ***AIR 1962 SC 253 titled The State Vs. Captain Jagjit Singh. It was held in case reported in 2012 Criminal Law Journal 702 titled Sanjay Chandra vs. Central Bureau of Investigation (Apex Court)*** that object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was further held that accused should not be kept in jail for an indefinite period. It is settled law that accused is presumed to be innocent until convicted by competent Court of law and in view of the fact that trial in present case will be concluded in due course of time and in view of the fact that investigation already stood completed as per police report Court is of the opinion that if

the applicant is released on bail at this stage then interest of State and general public will not be adversely affected.

8. Submission of learned Additional Advocate General appearing on behalf of non-applicant that if the applicant is released on bail at this stage then applicant will induce and threaten the prosecution witnesses and on this ground bail application filed by applicant be rejected is devoid any force for the reasons hereinafter mentioned. Court is of the opinion that conditional bail will be granted to the applicant. Court is also of the opinion that if the applicant will flout the terms and conditions of conditional bail order then prosecution will be at liberty to file application for cancellation of bail order in accordance with law.

9. Another submission of learned Additional Advocate General appearing on behalf of non-applicant that applicant already facing trial qua FIR No. 10/12 dated 8.1.2012 registered under Section 20 of the Narcotic Drugs and Psychotropic Substance Act 1985 and on this ground present bail application be rejected is devoid of any force for the reasons hereinafter mentioned. Prosecution did not place on record any document in order to prove that applicant has been convicted by a competent Court of law under Narcotic Drugs and Psychotropic Substance Act 1985. It is well settled law that accused is presumed to be innocent until convicted by the competent Court of law. It was held in case reported **2014 (9)**

SCC 122 titled Manoj Narula vs. Union of India that registration of another criminal case is no ground for declining bail to the accused person. It was held that accused is presumed to be innocent until convicted by a competent Court of law. It was held in case reported in **2007 (1) Shimla Law Cases page 152 titled Ved Ram vs. State of H.P.** that if quantity is less than commercial quantity then bail could be granted in NDPS cases. In view of the above stated facts and in view of the fact that alleged quantity recovered from the applicant is less than commercial quantity and in view of the fact that trial in the present case will be concluded in due course of time Court is of the opinion that it is expedient in the ends of justice to release the applicant on bail. In view of the above stated facts point No.1 is answered in affirmative in favour of the applicant.

Point No. 2

Final Order

10. In view of my findings on point No.1 bail application filed by applicant under Section 439 Cr.P.C. is allowed and applicant is ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 5 lacs with two sureties in the like amount to the satisfaction of learned trial Court on following terms and conditions. (i) That applicant will join the proceedings of learned trial Court regularly till conclusion of trial in accordance with law

and will also join the investigation whenever and wherever directed to do so. (ii) That applicant will 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 the Court or to any police officer. (iii) That the applicant will not leave India without the prior permission of the Court. (iv) That applicant will not commit similar offence qua which he is accused. (v) That applicant will give his residential address in written manner to the Investigating Officer and Court. Applicant be released only if he is not required in any other criminal case. Bail application filed under Section 439 Cr.P.C. stands disposed of. My observations made in this order will not affect the merits of case in any manner and will strictly confine for the disposal of bail application filed under Section 439 of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.

**(P.S.Rana),
Judge.**

**December 31st, 2014
(kck)**