

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1923 of 2019

Date of Decision : October 31, 2019

Vikram Singh	...Petitioner.
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Versus

State of Himachal Pradesh	...Respondent.
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Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?' **No.**

For the petitioner : Mr. Jiya Lal Bhardwaj, Advocate, for the petitioner.

For the respondent : Mr. Nand Lal Thakur, Additional Advocate General, for the respondent.

Anoop Chitkara, Judge. (oral)

For possessing 16.6 grams of heroin, the petitioner, who is under arrest, on being arraigned as an accused in FIR Number 47 of 2019, dated 30.8.2019, registered under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (herein after referred as the "NDPS Act") and Section 14 of the Passport Act, in the file of Police Station Kasauli, District Solan, H.P., disclosing

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

non-bailable offences, has come up before this Court under Section 439 Cr.PC, seeking regular bail.

2. ASI Rajender Kumar, Police Station Kasauli, District Solan, H.P. is present along with records. Status report stands filed in the Court and the same is taken on record. Police file perused to the extent it was necessary for deciding the present petition, and the same stands returned to the police official. I have heard Sh. Jial Lal Bhardwaj, learned counsel for the petitioner and Sh. Nand Lal Thakur, learned Additional Advocate General for the respondent/State.

FACTS

3. The gist of the First Information Report and the investigation is as follows:

On 30.8.2019, Constable Pawan Kumar produced a Ruka at police post Kuthaar informing therein that while the police party was on patrolling near Bishanpur – Rampur road then at 3 a.m. (night) they saw a man coming from the side of Kuthaar carrying a carry bag, who on seeing the police party became perplexed and tried to run away from the spot after throwing the carry bag. On suspicion, the accused was apprehended, who told his name as Vikram Singh @ Vicky (petitioner herein). The carry bag which was thrown by the

accused was searched. A black coloured bag was found inside the carry bag alongwith an electronic weighing machine and a transparent polythene containing yellow coloured substance which was identified as Heroin. The weight of the contraband was found to be 16.6 grams. During investigation one other person named Bro from whom the present petitioner allegedly purchased the contraband was also apprehended from Delhi. After that the Investigating Officer completed the procedural requirement under NDPS Act and under Cr.PC.

The above said contraband was sent to FSL, Junga, which gave the following opinion:-

“ The exhibit stated as hereoin is a sample of Diacetyl morphine (Heroin).”

Thereafter, the other procedural formalities were completed and the aforesaid F.I.R. came to be registered.

REASONING

4. Keeping in view the quantity of contraband, I am of the considered view that the judicial custody of the petitioner is not going to serve any purpose whatsoever and I am inclined to grant him bail on the following grounds:

- (a) As per the FIR, the substance involved in is Heroin, mentioned at Sr. No. 56 of the Notification, issued under Section 2(viia) and (xxiia) of NDPS Act, specifying small and commercial quantities of drugs and psychotropic substances.
- (b) The quantity of drug involved is 16.6 grams (heroin), which is less than Commercial Quantity but greater than Small Quantity. As such the rigors of Section 37 of NDPS Act shall not apply in the present case. Resultantly, the present case has to be treated like any other case of grant of bail in a penal offence.
- (c) The petitioner is in judicial custody since 30.8.2019.
- (d) In the status report, there is no mention of previous criminal history of the bail petitioner.
- (e) The investigation is complete and challan already stands filed in the court of competent jurisdiction.
- (f) The petitioner is a permanent resident of the address mentioned in the memo of parties. Therefore, his presence can always be secured.
- (g) I am satisfied that no purpose will be served if the bail petitioner is sent to judicial custody.

(h) I am of the considered view that, *prima facie*, petitioner has made out a case for grant of bail. His custodial interrogation is not required at all.

5. In the result the present petition is allowed. The petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing personal bond in the sum of ₹10,000/- with one surety in the like amount, to the satisfaction of the learned Special Judge/Sessions Judge or learned Additional Sessions Judge, Solan, H.P. The learned counsel for the accused as well as the attesting person shall explain the conditions of this bail to the petitioner.

6. This Court is granting the bail subject to the conditions mentioned herein. The petitioner undertakes to comply with all directions given in this order and the furnishing of bail bonds by the petitioner is acceptance of all such conditions:

- a) The petitioner shall neither influence nor try to control the investigating officer, in any manner whatsoever.
- b) The petitioner shall not hamper the investigation.
- c) The petitioner undertakes not to threaten or browbeat the complainant or to use any pressure tactics.
- d) The petitioner undertakes not to make any inducement threat or promise, directly or indirectly, to

the investigating officer or any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

e) In case, the petitioner is arraigned as an accused of the commission of any offence, prescribing the sentence of imprisonment for more than 3 years, and in case the bail petitioner is arraigned as an accused in any case under the provisions of the NDPS Act, irrespective of the quantity, be it small quantity, then within thirty days of knowledge of such FIR, the petitioner shall intimate the SHO of the present police station, with all the details of the present FIR as well as the new FIR and it shall be open for the State to apply to this Court, for cancellation of this bail, if it deems fit and proper.

f). The petitioner shall either sell or deposit all the fire arms alongwith ammunition and arms licences, if taken, before the concerned authorities within 30 days from today.

g). The petitioner undertakes to attend the trial.

7. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the petitioner.

8. Respondent shall send a copy of this order to S.H.O. of the concerned Police Station.

9. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

Petition stands allowed in the aforesaid terms.

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**(Anoop Chitkara),
Judge.**

October 31, 2019 **(PK)**