

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 403 of 2020

Reserved on : March 20, 2020

Date of Decision : March 23, 2020

Rozy @ Seema

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

Coram:

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

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. Rajesh Mandhotra, Advocate, for the petitioner.

For the respondent : Mr. Nand Lal Thakur, Addl. AG. with Mr. Ram Lal Thakur, Asstt. A.G. and Mr. Rajat Chauhan, Law Officer, for the respondent/State.

Anoop Chitkara, Judge.

For possessing 6.14 grams of heroin, the petitioner, who is under arrest, on being arraigned as accused in FIR Number 223 of 2019, dated Dec 12, 2019, registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (after now called "NDPS Act"), in the file of Police Station Indora, Distt. Kangra,, HP, disclosing non-bailable offences, has come up before this Court under Section 439 CrPC, seeking regular bail.

2. Status report stands filed. I have seen the status report(s) as well as the Police file, to the extent it was necessary for deciding the present petition, and heard learned Counsel for the parties.

3. Prior to the present bail petition, the petitioner had filed a petition under Section 439 CrPC, before Special Judge-II, Kangra at Dharamshala, HP. However, vide order dated Jan 21, 2020, the Court dismissed the petition.

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

FACTS

4. The gist of the First Information Report and the investigation is that on Dec 12, 2019, police party was present within the jurisdiction of Police Station Indora to conduct crime and for the purpose of patrolling. At about 3.50 p.m., at Meelwan the police party met Lady Constable Rashmi and while they were talking to her in the meantime one lady was noticed coming on a scooty, who on seeing the police officials stopped and started reversing the same. Police found such conduct of the said lady as suspicious. On this Head Constable Vipin Kumar signalled LC Rashmi to nab that lady and within few steps the Lady Constable was able to nab the said lady. On inquiry, the lady revealed her name as Rozy alias Seema, petitioner herein. After that the police conveyed to her that they are suspicious of her selling narcotic substance. She was asked to open the dicky of the scooty from which police recovered a small transparent polythene packet which contained white coloured substance. The recovered substance on checking from the Drug Detection Kit tested positive for Heroin and upon weighment found to be 6.14 grams. Subsequently, the police party also complied with the procedural requirements under the NDPS Act and the CrPC and arrested the petitioner.

PREVIOUS CRIMINAL HISTORY

5. The following cases are pending against the bail petitioner:
1. FIR No. 02 of 2017 dated Jan 2, 2017, under Section 21 of the NDPS Act, Police Station Indora, Distt. Kangra, HP.
 2. FIR No. 215 of 2018, dated Aug 13, 2018, under Section 21 of the NDPS Act, Police Station Indora, Distt. Kangra, HP.

ANALYSIS AND REASONING:

6. Pre-trial incarceration needs to be justified depending upon the heinous nature of the offence, terms of the sentence prescribed in the Statute for such a crime, accused fleeing from justice, hampering the investigation, and doing

away with witnesses. The Court is under the Constitutional obligation to safeguard the interests of the victim, the accused, the society, and the State.

7. Section 2 (vii-a) of the NDPS Act defines commercial quantity as the quantity greater than the quantity specified in the schedule, and S. 2 (xxiii-a), defines a small quantity as the quantity lesser than the quantity specified in the schedule of NDPS Act. The remaining quantity falls in an undefined category, which is now generally called as intermediate quantity. All Sections in the NDPS Act, which specify an offense, also mention that minimum and maximum sentence, depending upon the quantity of the substance. Commercial quantity mandates minimum sentence of ten years of imprisonment and a minimum fine of Rupees One hundred thousand, and bail is subject to the riders mandated in S. 37 of NDPS Act.

8. Although the substance recovered from the petitioner is just 6.14 grams and very close to small quantity but keeping in view the criminal history, the petitioner is taking undue advantage of the bail already granted to her. While granting bail in earlier FIR, the learned Special Judge did not caution the bail petitioner that in case she repeats the offence then bail granted would cancel and it would have an impact on the subsequent bail applications. However, this Court is inclined to afford last opportunity to the Petitioner to mend her ways, making it very clear that in case, the petitioner repeats the offence, then this bail is liable to be cancelled and the State shall file application for cancellation of the present bail and it shall also be a factor for future bail applications of the petitioner.

9. Given the above reasoning, in my considered opinion, the judicial custody of the petitioner/accused is not going to serve any purpose whatsoever, and I am inclined to grant bail on the following grounds, but subject to stringent conditions:

- a) As per the FIR, the substance involved is heroin, mentioned at Sr. No. 56 of the Notification, issued under Section 2(viia) and (xxiiiia) of

NDPS Act, specifying small and commercial quantities of drugs and psychotropic substances.

b) The quantity of drug involved 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 Dec 12, 2019.

d) The investigation in the case is almost complete and challan stands filed in the Court having competent jurisdiction.

e) The petitioner is a permanent resident of address mentioned in the memo of parties; therefore, her presence can always be secured.

10. 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 her furnishing personal bond in the sum of Rs.10,000/- with two sureties in the like amount to the satisfaction of the Trial Court or the Court exercising jurisdiction over the concerned Police Station where FIR is registered.

11. The Court executing the personal and surety bonds shall ascertain the identity of the bail-petitioner, her family members, and of sureties, through AADHAR Card, Pan Card, Ration Card, etc. The petitioner shall mention phone numbers and other details, on the reverse page of the bonds.

12. The Counsel for the accused and the attesting official shall explain all conditions of this bail to the petitioner.

13. 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 appear before the Court which issues the summons or warrants, and shall furnish fresh bail bonds to the satisfaction of such Court, if such Court directs to do so.

- b) The petitioner undertakes to attend the trial.
- c) The petitioner shall not hamper the investigation.
- d) The petitioner undertakes not to contact the complainant and witnesses, to threaten or browbeat them or to use any pressure tactics.
- e) 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.
- f) The petitioner shall neither influence nor try to control the investigating officer in any manner whatsoever.
- g) In case, the petitioner is arraigned as an accused of the commission of any offence, prescribing the sentence of imprisonment of more than seven 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 a 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. In such case the State shall apply to this Court or to the Trial Court for cancellation of this bail, if it deems fit and proper.
- h) Within 30 days from today, the petitioner shall sell, or surrender, all firearms along with ammunition, and arms licenses, if any, to the authority which had given such permission.
- i) Apart from above, in case the Petitioner does not turn up before the Trial Court, then the trial Court may issue Non-Bailable warrants and send the petitioner to the Judicial Custody for the period for which the presence of the petitioner cannot be dispensed with. If the

petitioner violates any other condition(s) as stipulated in this bail order, then the Trial Court may direct the Public Prosecutor to file a cancellation application before it and it shall be lawful and permissible for the Trial Court to cancel the bail.

14. This order of bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.

15. In case the petitioner finds the bail condition(s) as violating fundamental or other right, or any human right, or faces any other difficulty due to any condition, then, the petitioner may file a reasoned application for modification of such term(s).

16. 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.

17. 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.

18. The petition stands allowed in the aforesaid terms.

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**(Anoop Chitkara),
Judge.**

March 23, 2020 (PK)