

## IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 399 of 2020

Date of Decision : April 30, 2020

---

Jagdish Lal

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

---

*Coram:*

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

*Whether approved for reporting?<sup>1</sup> Yes.*

For the petitioner : Mr. G.R. Palsra, Advocate, for the petitioner appeared through video conference.

For the respondent : Mr. Nand Lal Thakur, Addl. Advocate General and Mr. Bhupinder Thakur, Mr. Kunal Thakur and Mr. Amit Dhuman, Deputy Advocate Generals, for the respondent/State, appeared through video conference.

Ms. Shalini Thakur, Advocate, as Amicus Curiae.

---

**Anoop Chitkara, Judge**

Proceedings convened through Video Conferencing.

2. For possessing four kilograms of charas, the petitioner, who is under arrest, on being arraigned as a co-accused in FIR Number 111 of 2016, dated Oct 14, 2016, registered under Sections 20 and 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (after now called "NDPS Act"), in Police Station Aut, Distt. Mandi, HP, disclosing non-bailable offences, has come up before this Court under Section 439 CrPC, seeking regular bail.

3. Application being Cr.MP No. 668 of 2020 filed in the main petition No. C.MP(M) No. 399 of 2020, dated Apr 28, 2020, is received through the

---

<sup>1</sup> **Whether reporters of Local Papers may be allowed to see the judgment?**

Superintendent of Jail, District Jail Bangarh, Distt. Una, HP, and it is addressed to the Registrar (Judicial), High Court of Himachal Pradesh. Issue notice. Mr. Nand Lal Thakur, learned Addl. Advocate General appears and accepts service of notice through video conferencing. He submits that the main bail petition No. Cr.MP(M) No. 399 of 2020 is pending in this Court in which they have already filed the status report and the same may be treated as the status report even in this Cr.MP No. 668 of 2020.

4. In Cr.MP No. 668 of 2020, the Superintendent of District Jail, Bangarh, Una has submitted that the petitioner is suffering from Generalized-cum-Peripheral Vascular Disease i.e. Buerger's Disease/Atherosclerosis-cum-Takayasu Arteritis. He further submits that during his treatment in PGI Chandigarh the Doctors detected cancer in his lungs and is also under treatment in PGI qua that. The Superintendent of Jail further submits that the petitioner has become extremely frail due to his ill health and his condition is getting deteriorated by every passing day. It is further stated that the prison has neither any permanent Medical Officer nor any facility to take care of the prisoners suffering from serious ailments. It is further stated that the prison has no independent vehicle and they are facing great difficulty in getting the petitioner treated. On Apr 16, 2020 the petitioner was sent to the hospital and then he was returned to the prison on Apr 21, 2020. However, on Apr 23, 2020 his condition became extremely unwell and he was again sent to PGI Chandigarh but they again returned him. The Superintendent of Jail further submitted in the application that the petitioner has become so much frail that he cannot stand on his own legs and that he is not even eating food and is being given juice etc. Consequently, the Superintendent of Jail has prayed to this Court to decide the main bail application being CrMP(M) No. 399 of 2020.

5. This Court vide order dated Mar 3, 2020, had appointed Ms. Shalini Thakur, Advocate, as Amicus Curiae to assist the Court. After that on Mar 6, 2020 this Court had heard Ms. Shalini Thakur, learned Amicus Curiae who had

also handed over the synopsis of case law to support her contentions. On such date, on the request of the State that they had filed an application under Section 311 Cr.PC for additional evidence, the matter was adjourned for Mar 27, 2020. After that because of the lock-down due to Covid-19 pandemic, the Court work got suspended partially and, thus, the Registry could not list the matter because of the situation beyond its control.

6. Ms. Shalini Thakur, learned Amicus Curiae ha placed reliance on the judgment of the Hon'ble Supreme Court reported in *State of Kerala etc. vs. Rajesh etc.*, Criminal Appeal No(s) 154-157 of 2020 (Arising out of SLP(Crl.) No(s). 7309-7312 of 2019), decided on Jan 24, 2020. [2020 SCC OnLine SC 81]. In this judicial precedent the Hon'ble Supreme Court held as under:

"20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

22. We may further like to observe that the learned Single Judge has failed to record a finding mandated under Section 37 of the NDPS Act which is a sine qua non for granting bail to the accused under the NDPS Act.

23. The submission made by learned counsel for the respondents that in Crime No. 14/2018, the bail has been granted to the other accused persons(A-1 to A-4), and no steps have been taken by the prosecution to

challenge the grant of post-arrest bail to the other accused persons, is of no consequence for the reason that the consideration prevailed upon the Court to grant bail to the other accused persons will not absolve the act of the accused respondent(A-5) from the rigour of Section 37 of the NDPS Act.

24. The further submission of the learned counsel for the respondents that they have been falsely implicated in Crime No. 19/2018 for the reason that the batchmates of the excise official, Babu Varghese was convicted in the corruption case on the trap being laid down by the respondent-Shajimon(A-1) is only a conjecture of self-defence, and no inference could be drawn of false implication, more so when in Crime No. 19/2018 and 14/2018, charge-sheets have been filed after investigation and the matter is listed before the learned trial Judge for framing of the charge where the accused respondents certainly have an opportunity to make their submissions.

25. That apart, in the application which was filed before the learned Single Judge of the High Court by the appellant under Section 482 CrPC, the learned Single Judge has also prima facie accepted that error has been committed in granting bail to the accused respondents as observed in para 16 of the impugned judgment as under:—

“On going through the orders granted on 10.5.2019 allowing bail applications of A1 and A3 on the one hand and 5 th accused on the other hand in NDPS crime Nos. 19/2018 and 14/2018 respectively, I find that the bail was granted by the Court after being cognizant of the principles laid down in Section 37 of the Act whether it ultimately turned out to be right or wrong. May be as regards 3 rd accused was concerned, order was passed under misconception of facts. Likewise, the criminal antecedents concerning the first accused did not fall to the notice of this Court. What could at the most be said of the order passed by this Court is that it was erroneous or it did not involve application of mind. But then the question arises is whether the same court could under law reconsider the facts invoking Section 482 of the Code. I am of the opinion that the remedy of the State lay in challenging the orders of this Court, if it was really aggrieved, before a superior forum and not before the same court. Therefore, accepting the argument of the learned counsel for the accused, I hold that none of the applications seeking to recall the order of this Court is maintainable under law. (emphasis supplied)”

7. I have read the status report(s) and heard Mr. G.R. Palsra, learned counsel for the bail petitioner, Mr. Nand Lal Thakur, learned Additional Advocate General for the State of Himachal Pradesh and Ms. Shalini Thakur, learned Amicus Curiae, all through video conference.

8. Prior to the present bail petition, the petitioner had filed a petition under Section 439 CrPC, before the Additional Sessions Judge, Sundernagar, Distt. Mandi, HP. However, vide order dated Apr 2, 2020, the Court had dismissed the petition.

### **FACTS**

9. The gist of the investigation is that on Oct 13, 2016, police party was present at a place near Thalaut, within the jurisdiction of Police Station Aut, Distt. Mandi, HP and they were conducting traffic checking. At around 9.40 p.m. one Maruti van came from the side of Aut Tunnel and reached in front of the Police Station Thalaut. The Police Officials gave indication to the driver of the said Maruti van to stop the vehicle. After some distance the driver of the van made the vehicle come to a halt, and the police officials conducted the search of the vehicle by using torch light. The driver of the vehicle disclosed his name as Pradeep Kumar resident of Kullu. On the back seat, one male and a female, both adults, were sitting. The male adult disclosed his name as Jagdish Lal, the petitioner herein, and the female adult disclosed her name as Raj Kaur. The police found the driver of the van becoming perplexed and he offered the Police to settle the matter. After this the police officials conducted the search of the vehicle. Behind the back seat there was a carton of cardboard and on opening the same, the police recovered eight packets. On checking the same it contained charas. On weighing the same, it was found to be 4 kilograms. It led to the registration of the present FIR under Sections 20, 25 of the NDPS Act. Subsequently, the Police party also complied with the procedural requirements under the NDPS Act and the CrPC and arrested all the occupants of the vehicle including the petitioner herein. During investigation, the bail petitioner told the police that out of the total charas, 1.5 kg belongs to him. Similarly co-accused Prdeep Kumar told the police that charas measuring 2.5 kg belonged to him. Be that as it may, this is not relevant because it is not statement under Section 67 of the NDPS Act.

**ANALYSIS AND REASONING:**

10. Pre-trial incarceration needs justification depending upon the heinous nature of the offense, terms of the sentence prescribed in the Statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, and doing away with victim(s) and/or witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

11. 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.

12. The following aspects are relevant to decide the present bail petition:

(a) As per the FIR, the substance involved is charas, mentioned at Sr. No. 23 of the Notification, issued under Section 2(viia) and (xxiiiia) of NDPS Act, specifying small and commercial quantities of drugs and psychotropic substances. The quantity in this case is a commercial quantity.

(b) Needless to say that the rigors of Section 37 of the NDPS Act would not entitle the petitioner for grant of bail, however, at this stage it shall be appropriate to make reference to Section 437 (I) (ii) Cr.PC which provides that the Court may release on bail a person who is sick or infirm. It is beyond any shadow of doubt that the

petitioner is extremely sick and infirm. He is suffering from lung-cancer and Covid-19 disease also effects the lungs of a person. A request to grant him interim bail is received through the Superintendent of Jail.

(c) The learned Additional Advocate General also does not dispute the contents of the letter received from the Superintendent of Jail. What this letter implies is that the jail is practically unable to take care of the bail petitioner.

(d) Mr. Nand Lal Thakur, learned Addl. Advocate General also submits that due to the prevailing lock-down due to the spread of Covid-19 pandemic, it shall be extremely difficult for the State to shift this prisoner to a bigger hospital and provide treatment because of the logistics involved.

(e) On seeing the police party, the driver of the Maruti van had become perplexed and the recovery of the contraband was also effected from the boot of the vehicle.

(f) The petitioner is in judicial custody since Oct 14, 2016.

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

(h) Before releasing the petitioner from custody, her/his AADHAR and other proofs of identity would secure presence during trial.

13. The Hon'ble Supreme Court in *Tulsi Ram Yadav vs. State of Uttar Pradesh*, I.A. No. 28851/2020 in Petitions(s) for Special Leave to Appeal (Crl.) No. 10732/2019, dated Mar 27, 2020, held as under:

“The applicant has been convicted of an offence under Section 302 of the Indian Penal Code. The Special Leave Petition arises from the judgment of the High Court of Allahabad dated 13 May 2019, affirming the conviction and the sentence of life imprisonment. The interlocutory application is for interim bail on medical grounds.

The applicant has been detected to suffer from pancreatic carcinoma. It has been disclosed in the application that the applicant was referred by the Swarup Rani Hospital at Allahabad to the Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow. Mr. Tuhin, learned counsel appearing on behalf of the applicant states that the applicant is presently undergoing indoor treatment at SGPIMS, Lucknow. However, in the current situation, the surgery has not been specifically scheduled on a particular date. Relevant medical papers have been annexed to the application for interim bail.

Having heard learned counsel appearing on behalf of the applicant and upon perusing the record, we find it appropriate and just to direct that the applicant be released on interim bail for a period of six weeks so as to enable him to pursue the medical treatment which he is undergoing for pancreatic cancer. The applicant shall surrender immediately upon the expiry of the period of six weeks from today. In the meantime, the whereabouts of the applicant shall be communicated by him to the nearest police station on a weekly basis. We are passing this order in the peculiar facts which have been noted above and having regard to the current situation.

The interlocutory application is disposed of in the above terms.”

14. Given above, the life of the human being cannot be put to peril simply because his case is pending trial for the last most than three years. Therefore, without going into the merits of the case, keeping in view the extremely bad medical condition of the bail petitioner, this Court deems it appropriate to release him on bail. This Court can safely believe that the health of the petitioner would be a deterrent in his repeating the offence during bail and also because of very bad health it may not be possible for the petitioner to abscond or run away.



15. Given the above reasoning, in my considered opinion, the judicial custody of the petitioner is not going to achieve any significant purpose. Thus, the Court is granting bail and releasing the petitioner on personal bond in the sum of Rs. 50,000/-, subject to the following conditions, irrespective of the contents of the bail bonds:

(a) 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 Rs.50,000/- (rupees fifty thousand only) to the satisfaction of the Trial Court/Sessions Judge/Addl. Sessions Judge. The trial Court shall intimate the next date of the trial to the petitioner. The Court is dispensing with the requirement of furnishing surety bonds at this stage to avoid travelling of persons to furnish the sureties, to abide by the lockdown ordered by the Government for the safety of the people, by maintaining social distancing to contain the spread of the Covid-19 disease. In case the petitioner continues to appear before the Trial Court then it shall not insist upon surety bonds. However, if the petitioner fails to appear, even for one time before the Trial Court, the only exception being admitted in a hospital, then in such a situation the petitioner shall furnish one surety bond in the sum of Rs. 50,000/- to the satisfaction of the trial Court. In case the petitioner does not attend the Court for the second time, then this bail shall automatically stand cancelled without calling for any further orders from this Court.

(b) The bail bonds shall continue to remain in force throughout the trial and even after that in terms of section 437-A of the CrPC.

(c) The petitioner shall join investigation as and when called by the Investigating officer or any superior officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM

and shall be let off before 5 PM. The petitioner shall not be subjected to third-degree treatment, indecent language etc.

(d) The petitioner shall fully co-operate in the investigation and shall not hamper it, in any manner what so ever.

(e) The petitioner shall not influence, threaten, browbeat or pressurize the complainant, witnesses, and the Police official(s).

(f) The petitioner shall not make any inducement, threat, or promise, directly or indirectly, to the Investigating officer, or any other person acquainted with the facts of the case, to dissuade her from disclosing such facts to the Police, or the Court, or tamper with the evidence.

(g) The petitioner shall appear before the trial Court, on issuance of summons/warrant by such Court.

(h) There shall be a presumption of proper service to the petitioner about the date of hearing in the trial Court, even if such service takes place through phone/mobile/SMS/WhatsApp/E-Mail/Facebook or any other similar medium, by the trial Court, or by the Prosecution.

(i) The petitioner shall attend the trial on each date, unless exempted.

(j) In case of Non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of CrPC. The failure of the petitioner to reimburse the State shall entitle the trial Court to order transfer of money from the bank account(s) of the petitioner, if any. However, this recovery is subject to the condition that the expenditure incurred must be only

to trace the petitioner and relates to the exercise undertaken solely to nab the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

(k) The petitioner shall abstain from all criminal activities, if he does so, then in the fresh FIR, the Court shall take into account that even earlier the Court had cautioned the accused not to repeat the offence.

(l) In case the petitioner commits any fresh offence during the bail, then he shall intimate the SHO of the present police station, with all the details of the present and the new FIR, within thirty days of the knowledge of such fresh FIR. In such a situation, it shall be open for the State, if it deems fit and proper, to apply to the trial Court, and in case the trial is yet to commence then to this Court, for cancellation of this bail. The trial Court on receipt of such application shall be competent to cancel the bail if it so decides.

(m) The petitioner shall surrender all firearms along with ammunition, if any, and the arms license to the concerned authority within three months from today.

(n) The petitioner shall inform the SHO about the place of residence during trial. The petitioner shall intimate about the change of residential address, within two weeks from such change, to the police station, and after filing of the Police report also to the trial Court.

(o) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the petitioner, and even the trial Court shall be competent to cancel the bail.

16. After the release of the petitioner from the Jail the State shall ensure that the relatives of the petitioner get permits to comfortably commute him to the place of his residence.

17. In case the petitioner finds the bail condition(s) as violating fundamental or other rights, including any human right, or faces any other difficulty due to any condition, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, before the Court taking cognizance or the trial Court, as the case may be.

18. The Counsel representing the accused and the Judicial officer accepting the bail bonds, shall explain all conditions of this bail order to the petitioner, in vernacular.

19. 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.

20. Consequently, 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 aforesaid terms.

21. The Court executing the personal bonds shall ascertain the identity of the bail-petitioner, his family members, through AADHAR Card. The petitioner shall give details of AADHAR Card, phone number(s), WhatsApp number, e-mail, Facebook account, etc., Pan Card and Passport if available, on the reverse page of the personal bonds. The petitioner shall also furnish details of personal bank account.

22. The present bail order is only for the FIR mentioned above. It shall not be a blanket order of bail in all other cases, if any, registered against the petitioner.

23. The SHO/Additional SHO of the concerned Police Station or the Investigating Officer shall send a copy of this order, preferably a soft copy, to the complainant.

24. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

25. The petition stands allowed in the terms mentioned above.

26. The Secretary shall handover this order to the concerned branch of the Registry of this Court, and the said official shall immediately send a copy of this order to the District and Sessions Judge, concerned, by e-mail. The Court attesting the personal bonds shall not insist upon the certified copy of this order, and shall download the same from the website of this Court, which shall be sufficient for the purposes of the record.

27. The Secretary shall handover an authenticated copy of this order to the Counsel for the Petitioner, and to the Ld. Advocate General, if they ask for the same.

This Court expresses its gratitude to Ms. Shalini Thakur, learned Amicus Curiae for rendering valuable assistance in this case.

**(Anoop Chitkara),  
Judge.**

April 30, 2020 (PK)