

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 566 of 2020
Decided on: 27th April, 2020

Veena	Petitioner
	Versus	
State of Himachal Pradesh		...Respondent

Coram

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.
Whether approved for reporting?¹ Yes.

For the petitioner: Mr. N.S. Chandel, Sr. Advocate.

For the respondent/State: Mr. Himanshu Mishra, Additional Advocate General, with Mr. Yudhvair Singh Thakur & Mr. Kamal Kant, Deputy Advocates General.

Chander Bhusan Barowalia, Judge. *(oral).*

The matter is taken up through video conference.

2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking her release in case FIR No. 28 of 2020, dated 18.02.2020, under Sections 21 and 29 of the ND&PS Act, registered in Police Station Damtal, District Kangra, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. The petitioner is resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful

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

purpose will be served by keeping her behind the bars for an unlimited period, so she be released on bail.

4. Police report stands filed. As per the prosecution story, on 18.02.2020 a police team was on patrol duty around Chhanni Beli, Kandrodi, Damtal etc.. When the police team reached near Railway Chakki Bridge, near Sheetla Mata Temple, and started checking the vehicles, police spotted a scooty for checking. The scooty did not have any registration plate and on being asked the qua the registration plate, the female who was driving the scooty turned perplexed and confused. She divulged that the scooty is applied for. Police suspected that the female is transporting some contraband. Police tried to associated independent witnesses, but as the area was secluded, no one could be associated. Thereafter, the police searched the scooty and found a white bag from the dicky of the scooty, which contained some brownish substance. The obtained substance was examined through drug detection kit and found to be heroin and on weighment it was 6.15 grams. Thereafter, the police completed all the codal formalities. Spot map was prepared and personal search of Veena (petitioner herein) was conducted through Lady Constable, but nothing incriminating was found. Police registered a case under apt Sections of ND&PS Act and the petitioner was arrested. The contraband was sent for chemical examination and it was found to be sample of Diacetyl Morphine (Heroin). During the course of investigation it was unearthed that she is a

divorcee and she used to sell heroin for her livelihood. She has further disclosed that she purchased the contraband from one Sandeep @ Happy on 17.02.2020 for Rs. 5000/-. She further disclosed that Sandeep @ Happy is very clever person. On 22.02.2020 police arrested accused Sandeep @ Happy. As per the police, *challan* stands presented in the learned Trial Court and now the case is listed for prosecution evidence on 16.07.2020. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner has committed a serious crime. In case the petitioner is enlarged on bail, at this stage, she may tamper with the prosecution evidence and may also flee from justice, so the bail application of the petitioner be dismissed.

5. I have heard the learned Senior Counsel for the petitioner, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

6. The learned Senior Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as she is resident of the place. He has further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, *challan* stands presented in the Court, petitioner is a divorcee and nothing is to be recovered at the instance of the

petitioner, so the petition may be allowed and the petitioner may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner has committed a serious crime. He has further argued that in case she is enlarged on bail, she may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail application of the petitioner may be dismissed.

7. In rebuttal the learned Senior Counsel for the petitioner has argued that the petitioner cannot be kept behind the bars for an unlimited period, especially when investigation is complete, *challan* stands presented in the learned Trial Court and in the wake of the fact that custody of the petitioner is not at all required by the police, so the petition be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the quantity of the recovered contraband, the petitioner is a lady of 51 years, she is a divorcee, she is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as she is resident of the place, her custody is not at all required by the police, she is ready and willing to abide by the terms and conditions of bail, in case so granted, and also the fact that the petitioner cannot be kept behind the bars for an unlimited period, so this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in her favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who

has been arrested by the police in case FIR No. 28 of 2020, dated 18.02.2020, under Sections 21 and 29 of the ND&PS Act, registered in Police Station Damtal, District Kangra, H.P., shall be released on bail forthwith in this case, subject to her furnishing personal bond in the sum of ₹20,000/- (rupees twent thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner 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 Investigating Officer or Court.

9. In view of the above, the petition is disposed of.

Copy *dasti*.

27th April, 2020
(virender)

(Chander Bhusan Barowalia)
Judge