

HON'BLE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No.570 of 2020

Decided on: 30.04.2020

Satish ThakurPetitioner

Versus

State of Himachal PradeshRespondent

Coram:

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Y.K. Thakur, Advocate, through
video conferencing.

For the respondent : Mr. Anil Jaswal, Additional Advocate
General, through video
conferencing.

Jyotsna Rewal Dua, Judge (Oral).

By way of present petition filed under Section 439 of the Code of Criminal Procedure, the petitioner has prayed for grant of regular bail, in F.I.R. No.17/2020, dated 20.02.2020, under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, Dharampur, District Solan (H.P.).

2. The gist of the case against the petitioner is that a police patrolling party had laid a Nakka near 'The Fern Surya Resort' towards Kumarhatti-Dharampur, District Solan, on 20.02.2020. At around 06.15 p.m., the patrolling party stopped a Haryana Roadways Bus bearing No.HR-47D-0577 for

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

checking. The driver and conductor of the bus were associated in its inspection. The occupant of seat No.24 (bail petitioner) appeared perplexed, raising the suspicion of police patrolling party. The red-colour Jacket, kept by him on his lap was searched, which led to recovery of a light brown coloured substance kept in a transparent envelope, from the left pocket of the Jacket. On the basis of experience of the police personnel, the recovered substance was determined as heroin, which on weighing was found to be 21.30 grams. The search was carried out in accordance with law and after completing all codal formalities, the instant FIR was registered. The bail petitioner was arrested on 20.02.2020 and is in custody ever-since.

3. I have heard learned counsel for the parties through video conference and gone through the status report filed today by the respondent/State.

4. According to status report, during investigation the bail petitioner disclosed that his father had purchased a pick-up vehicle in his name which he drives at Solan, as his profession is that of driver. He also disclosed that he was consuming heroin for the last about 5-6 months. The bail petitioner came in contact with a person at Delhi through mobile. He went to Delhi in order to meet him on 19.02.2020 and obtained the

contraband against payment of Rs.20,000/-. The bail petitioner was unable to identify the person who had allegedly supplied him the contraband. On his return journey from Delhi to Solan, the bail petitioner was apprehended in the instant FIR. An earlier bail petition moved by him was rejected by learned Special Judge-III, Solan, District Solan, on the ground that bail petitioner was found transporting heroin from Delhi to Solan and he may again indulge in such transaction of contraband in case he is ordered to be released on bail and further that possibility of his tampering with the prosecution evidence cannot be ruled out.

5. Learned counsel for the bail petitioner argued that bail petitioner is innocent and has been falsely implicated with the alleged offence. The contraband allegedly recovered from him, in any case, is of intermediate quantity. Even, as per status report it was not meant for transportation but for self consumption of the petitioner. Petitioner is in custody for more than two months. The investigation in the matter is complete. In case the bail petitioner is ordered to be released on bail, he will abide by all the terms and conditions, which may be imposed upon him by this Court and that he will not influence the witnesses or tamper with the prosecution evidence, in any manner.

6. Per contra, Learned Additional Advocate General, submits that bail petitioner may not be released on bail as on an earlier occasion also he was found in possession of around 334 grams charas/cannabis, leading to registration of FIR No.232/2017, under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Sadar, Solan, District Solan and that matter is now under consideration of learned Additional Sessions Judge-II, Solan.

7. In the present case, the quantity of heroin allegedly recovered from the possession of bail petitioner is stated to be 21.30 grams. Since the 21.30 grams recovered quantity of heroin from the possession of bail petitioner is of intermediate quantity, therefore, rigors of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, will not apply to the instant case.

From the perusal of status report, at this stage, it appears that the contraband was meant for consumption of the bail petitioner himself. No doubt, at an earlier occasion also, the bail petitioner was allegedly found in possession of 330 grams of cannabis leading to registration of FIR No.232/2017 at Police Station Sadar, Solan, District Solan. However, considering the fact that the quantity of contraband allegedly recovered from his possession is intermediate quantity and that the bail

petitioner, aged 23 years, is behind the bars w.e.f. 20.02.2020 and a local resident of Village Shohach, P.O. Nishani, Tehsil Nirmand, District Kullu (H.P.), therefore, his presence can be secured in the trial. Interest of justice can be secured by directing that in case the petitioner is found to be involved in any other FIR under Narcotic Drugs and Psychotropic Substances Act, then the instant bail is liable to be cancelled.

In view of the above, instant petition is allowed. Accordingly, the bail petitioner is ordered to be released on bail, in FIR No.17/2020, dated 20.02.2020, under Section 21 of the Narcotic Drugs & Psychotropic Substances Act, 1985, registered at Police Station, Dharampur, District Solan (H.P.), subject to his furnishing personal bond in the sum of Rs.75,000/-, with one local surety in the like amount, to the satisfaction of learned trial Court having the jurisdiction over the Police Station concerned. The bail is granted subject to the following conditions:-

- i). The petitioner is directed to join and cooperate the investigation of the case as and when called for by the Investigating Officer in accordance with law;
- ii). The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever;

- iii). The petitioner shall not leave India without prior permission of the Court;
- iv). The petitioner shall not 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/her from disclosing such facts to the Court or any Police Officer;
- v). In case the petitioner is put to trial, then he shall attend the trial on every hearing, unless exempted in accordance with law;
- vi). The petitioner shall inform the Station House Officer of the Police Station concerned about his place of residence during bail and trail. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any; and
- vii). It is made clear that in case the petitioner is arraigned as an accused in future, in any FIR under NDPS Act, then his bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard.

It is clarified that the observations made above are only for the purpose of adjudication of the present bail petition and learned trial Court shall not be influenced by any of these observations while deciding the case on merits. It shall be open for the prosecution to move for cancellation of the bail in case of violation of any of the terms & conditions of the bail or the petitioner abuses the liberty granted and breaches any of the conditions of bail. The petition stands disposed of accordingly.

The Registry is directed to send a copy of this order to the District and Sessions Judge concerned through e-mail. The competent Court/Authority, attesting the personal/surety bonds, shall not insist upon for requiring certified copy of this order and shall download the same from the website of High Court for the purpose of office record.

Copy(s) of the aforesaid order be supplied by the Secretary/Private Secretary concerned to learned counsel for the parties through e-mail.

April 30, 2020
(Yashwant)

(Jyotsna Rewal Dua)
Judge