

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr.MP(M) No. 583 of 2020

Date of Decision : April 29, 2020

Goldy

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

Coram:

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

Whether approved for reporting?¹ No.

For the petitioner : Mr. Vijender Katoch, Advocate, through video conference.

For the respondent : Mr. Nand Lal Thakur, Additional Advocate General through video conference.

Anoop Chitkara, Judge.

For possessing 322.8 grams of Tramadol capsules, the petitioner, who is under arrest, on being arraigned as accused in FIR Number 120/19, dated September 26, 2019, registered under Section 20-61-85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (after now called "NDPS Act"), in Police Station Damtal, District Kangra, HP, disclosing non-bailable offences, has come up before this Court under Section 439 CrPC, seeking regular bail.

2. While issuing notices to the State, the Court had requested Mr. Nand Lal Thakur, Additional Advocate General to have telephonic instructions in the matter from the concerned Police Station, and to procure status report at the earliest, either through WhatsApp/ e-mail and forward the same to this Court on

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

e-mail id highcourt-hp@nic.in and also send the scanned copy or PDF copy of the status report to the learned Counsel for the petitioner on his WhatsApp number/e-mail.

3. Mr. Nand Lal Thakur, learned Addl. Advocate General has filed the status report through e-mail, printout whereof has been placed on record.

4. I have read the status report(s) and heard Mr. Vijender Katoch, learned counsel for the bail petitioner and Mr. Nand Lal Thakur, learned Additional Advocate General for the State of Himachal Pradesh, through video conference.

5. The petitioner did not file any power of attorney. To contain the spread of Novel Corona Virus, the Epidemiologists have advised to maintain social distancing in the entire world. Consequently, to avoid unnecessary congregation, this Court exempts the petitioner from filing the power of attorney.

6. Mr. Nand Lal Thakur, Ld. Additional Advocate General submits that he has posted the report to this Court through e-mail. He further submits that he has also sent a copy of the status report to Mr. Vijender Katoch, learned Counsel for the petitioner on his WhatsApp number.

7. Mr. Vijender Katoch, learned counsel argues that although the FIR is dated 26.9.2019, but the petitioner was arrested only in the month of February, 2020. He further contends that she has two years old baby, who is uncomfortable with his 'Massi' and the Massi of the child is reluctant to take further care of the child.

8. Mr. Nand Lal Thakur, learned Additional Advocate General contends that the total weight of the substance allegedly tramadol was 322.8 grams, which is prohibited substance under NDPS Act. He further contended that entry at Sl. No. 238 ZH

published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (ii), vide S.O. No. 1762 (E), dated 26th April, 2018, mentions the commercial quantity to be greater than 250 grams. Mr. Thakur, further contends that in view of this Section 37 of the NDPS Act comes into operation.

9. Without going into the question whether the substance is the commercial quantity or not and without even going into the question whether the judgment passed by the Hon'ble Supreme Court in Hira Singh's case applies to medicine or not, this Court is concerned with slightly bigger issue. The State needs to offer explanation that why did the I.O. take so much time to arrest the petitioner. Secondly, the investigation about the possession of the place from where the police had recovered the capsules and its connection with the petitioner.

10. To consider these questions, perusal of the police file is required. The Police Station in question being on the border of Punjab is highly sensitive. If this Court calls the police file, it might spread the infection of Covid-19 disease and may infect the entire police station. Keeping in view the sensitive location of the Police Station, to take such risk at this stage, would be unprecedented.

11. Mr. Vijender Katoch, learned counsel, acknowledging the gravity of situation and the ground realities, seeks permission to withdraw this petition at this stage, with liberty reserve to file afresh, as and when the lockdown is over. Leave and liberty as sought is granted. The petition is accordingly dismissed as withdrawn.

April 29, 2020 (ps)

**(Anoop Chitkara),
Judge.**