

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1394 of 2020

Decided on: 31.08.2020

Shokat AliPetitioner

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. Deepak Kaushal, Advocate.

For the respondent/State: Mr. S.C. Sharma and Mr. P.K. Bhatti,
Additional Advocates General with Mr.
Kamal Kishore, Deputy Advocate
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 his release in case FIR No. 92 of 2020, dated 21.07.2020, under Section 21 of the ND&PS Act, registered in Police Station Majra, District Sirmour, H.P.

3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is

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

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

4. Police report stands filed. As per the prosecution story, on 21.07.2020 a police team was on patrol duty and at about 08:30 p.m., when the police team reached place called Jagatpur, police got a secret tip-off that Shokat Ali (petitioner herein) is involved in selling narcotic drugs to the people from his residence and in case his shop and residence are raided, narcotics can be recovered. Thereafter, acting upon the secret tip-off, police associated independent witnesses and visited the premises of the petitioner. During the search of the premises of the petitioner, police recovered a bag containing 6 (six) strips of Pervorin Spas, total 57 capsules and 5 (five) strips of Becalm, in total 70 tablets. Each capsule of Pervorin spas was found containing 100 mg Tramadol Hydrochloride salt. As per the police, the petitioner could not produce any valid licence for kept the narcotic drugs. Thereafter, the police proceeded with completing the codal formalities. Police prepared the spot map, recorded the statements of the witnesses and the petitioner was arrested. During the course of interrogation, the petitioner disclosed that at village Misharwala he met a truck driver, from whom he purchased the above narcotics. He feigned ignorance

the name and whereabouts of that truck driver. The scientific analysis report reveals that Alprazolam is present in the above recovered narcotics. During the course of further investigation, it has been unearthed that one more case under the ND&PS Act was found to have been registered against the petitioner and in addition to this a case under Sections 279, 337 and 338 IPC is also pending against him. As per the police, the petitioner is very clever person and there is possibility that in case he is granted bail, he may flee from justice. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was involved in a serious offence, he is dealing in narcotics and there is every possibility that in case at this stage he is enlarged on bail, he may tamper with the prosecution evidence, so the bail application of the petitioner may be dismissed.

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

6. The learned 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 permanent resident of the place and thus neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an

unlimited period, especially when investigation is complete, nothing is to be recovered from the petitioner and his custody is not at all required by the police, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence. He has further argued that in case the petitioner is enlarged on bail, at this stage, he may flee from justice and may tamper with the prosecution evidence. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is not a drug peddler and a drug addict, so he needs proper counseling and medical treatment for getting rid from drugs. He has further argued that now the investigation is complete, nothing remains to be recovered from the petitioner or at his instance, he is ready and willing to abide by the terms and conditions of bail, in case granted. He has argued that the petitioner cannot be kept behind the bars for an unlimited period and the custody of the petitioner is not at all required by the police, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the quantity of the recovered contraband, which is intermediate quantity, the fact that the petitioner is permanent resident of the place and thus neither in a position to flee

from justice nor in a position to tamper with the prosecution evidence, the fact that the petitioner is a drug addict and not a drug peddler, he cannot be kept behind the bars for an unlimited period, nothing remains to be recovered from him or at his instance and also considering all other facets of the case and without discussing the same at this stage, , which has come on record, and without discussing the same at this stage, 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 his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police in case FIR No. 92 of 2020, dated 21.07.2020, under Section 21 of the ND&PS Act, registered in Police Station Majra, District Sirmour, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of ₹50,000/- (rupees fifty 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*.

31st August, 2020
(*virender*)

(Chander Bhusan Barowalia)
Judge