

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 28th DAY OF JANUARY, 2022**

BEFORE

**HON'BLE MR. JUSTICE SATYEN VAIDYA, JUDGE
CRIMINAL MISCELLANEOUS PETITION (MAIN) No .166 of 2022**

BETWEEN:

**SH. SURAJ SINGH AGED ABOUT 62 YEARS S/O SH.
DHARAM DASS, R/O VILLAGE BAROHI, POST
OFFICE BALH, TEHSIL PADHAR, DISTT. MANDI,
H.P. THROUGH HIS SON AND NEXT FRIEND SH.
GIAN CHAND AGED ABOUT 39 YEARS, S/O SH.
SURAJ SINGH, R/O VILLAGE BAROHI, POST
OFFICE BALH, TEHSIL PADHAR, DISTT. MANDI,
H.P.**

.....PETITIONER

(BY SHRI S.K. BANYAL, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH

.....RESPONDENT

**(BY MR. RAJINDER DOGRA, SR. ADDITIONAL
ADVOCATE GENERAL, MR. DINESH THAKUR,
ADDITIONAL ADVOCATE GENERAL AND MR.
KAMAL KANT CHANDEL, DEPUTY ADVOCATE
GENERAL WITH MR. MANOJ BAGGA, ASSISTANT
ADVOCATE GENERAL, FOR THE
RESPONDENT/STATE;**

**ASI SANJEEV SINGH, P.S. PADHAR, DISTT, MANDI,
H.P.)**

This petition coming on for orders this day, the Court passed the following :-

ORDER

Petitioner is an accused in case FIR No. 122/2019, dated 09.11.2019, registered at Police Station Padhar, District Mandi, H.P., under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as the 'NDPS Act' for short).

2. Petitioner is in custody since 09.11.2019.
3. The allegation against the petitioner is that on 09.11.2019, he was apprehended on suspicion by police near place Phagni within the jurisdiction of Police Station, Padhar, District Mandi, H.P. He was found carrying a bag. On noticing the presence of police, he threw the bag on the ground. The only available independent witness was associated. On search of the bag of the petitioner, 1.344 Kg cannabis/charas was recovered and seized. The case was registered under Section 20 of the NDPS Act. Petitioner was formally arrested. After completion of the investigation, the challan was presented in the Court of learned

Special Judge, Mandi. Statements of the prosecution witnesses are in the process of being recorded by learned Special Judge.

4. Petitioner, by way of instant petition, has approached this Court for grant of bail under Section 439 of the Code of Criminal Procedure in the above noted case. Petitioner has pleaded his innocence and false implication. It has been averred that six witnesses have already been examined and no fruitful purpose shall be served by keeping the petitioner in custody for indefinite period. Placing reliance upon the statements of the witnesses already recorded, it has been contended that the perusal of the statements of such witnesses makes it *prima facie* clear that there is no reasonable ground to believe that the petitioner is guilty of offence charged against him. As per petitioner, he is behind the bar for the last more than two years. He has not been convicted previously and, in fact, has no past criminal history. Petitioner has stated that in case of his release on bail, he will attend the trial on each and every date of hearing and will not tamper with the prosecution evidence. He has further undertaken to abide by all the conditions as may be imposed against him.

5. I have heard learned Counsel for the petitioner as well as learned Additional Advocate General and have also perused the status report as also the police file produced at the time of arguments.

6. Petitioner had earlier approached this Court for the grant of bail in the same FIR on more than one occasions. Whereas Cr.MP(M) No. 1031 of 2020 filed by the petitioner was later withdrawn by him on 08.07.2020 with liberty to file fresh petition at later stage, the later bail petition No. Cr.MP(M) No. 2289 of 2020 of the petitioner was rejected by the Coordinate Bench of this Court on merit vide order dated 31.12.2020.

7. In ***State of H.P. Vs. Kajad, 2001, 7 SCC 673***, it has been held by the Supreme Court that successive bail applications are permissible under the changed circumstances only and filing of such successive bail applications, without change in circumstances, amounts to seeking review of earlier order on the bail application, which is not permissible under the criminal law.

8. Petitioner is charged with an offence punishable under Section 20 of the NDPS Act with allegations that commercial quantity of cannabis/charas was recovered from his conscious

possession. In such like cases, even if some change in circumstances is presumed, in order to get bail the petitioner has to cross the legal bar created by the provisions of Section 37 of the NDPS Act.

9. In the facts of the instant case, vide order dated 31.12.2020 passed in Cr.MP(M) No. 2289 of 2020, the Coordinate Bench of this Court, while dismissing the bail petition of the petitioner, had not found the case of the petitioner to be of the nature, where he could be extended the benefit of exemption of clauses under Section 37 of the NDPS Act. That being so, it is incumbent upon the petitioner to show such change in circumstances, which may persuade this Court to take a different view.

10. Petitioner has placed reliance on the statements of witnesses already recorded by learned Special Judge, in support of his argument to the effect that from perusal of these statements reasonable grounds can be entertained for concluding *prima facie* innocence of the petitioner. The arguments raised on behalf of the petitioner deserves to be rejected for the reason that this Court while dealing with the

bail application will not appreciate the evidence being recorded during the trial. Undisputedly, only some of the witnesses out of the entire list of the witnesses relied upon by the prosecution, have been examined. In these circumstances, it is not prudent to form any opinion as to the innocence or guilt of the petitioner on the basis of such partial evidence.

11. In view of above discussion, petitioner has failed to carve out any case for grant of bail in his favour. The rigors of Section 37 NDPS Act applicable against the petitioner and it is not a case where the Court may form even a *prima facie* opinion about the innocence of the petitioner and accordingly, the petition is dismissed.

(Satyen Vaidya)
Vacation Judge

28th January, 2022
(sushma)