

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 31st DAY OF MAY, 2022
BEFORE
HON'BLE MR. JUSTICE VIVEK SINGH THAKUR
CRIMINAL MISC. PETITION (MAIN) NO. 565 Of 2022

Between:-

CHAMKEELA
AGED ABOUT 34 YEARS,
S/O SHRI GURDEEP SINGH,
RESIDENT OF VILLAGE & POST OFFICE
CHHANI, TEHSIL INDORA, DISTRICT
KANGRA, H.P.

.....PETITIONER

(BY SH.VIJENDER KATOCH, ADVOCATE)

AND

THE STATE OF HIMACHAL PRADESH

.....RESPONDENT

(BY SH.HEMANT VAID, ADDITIONAL
ADVOCATE GENERAL)

Reserved on: 24.05.2022

Decided on: 31.05.2022

Whether approved for reporting?

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

O R D E R

Petitioner has approached this Court seeking bail under Section 439 Code of Criminal Procedure (in short 'Cr.P.C.'), in case FIR No.71 of 2021, dated 06.06.2021, registered in Police Station Damtal, District Kangra, H.P., under Sections 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Status report stands filed. Record was also made available.

3. In the status report, circumstances in which, on prior information, after complying provisions of Section 42(2) of the NDPS Act, Chitta weighing 12.73 grams and 421 Capsules RIDLEY containing tramadol weighing 281.4 grams were recovered from the house of co-accused Kajal, have been narrated in detail.

4. For recovery of aforesaid contraband, co-accused Kajal was arrested on 07.06.2021. As per prosecution case, during investigation Kajal disclosed that her husband has expired and there is no source of income of her family and, therefore, since last six months she has engaged herself in purchasing and selling heroin/Chitta and Drug Capsules from petitioner Chamkeela and sometime before recovery she had purchased 10 grams heroin/Chitta and Drug Capsules for a consideration of ₹28,000/- from petitioner Chamkeela, who is her neighbour and he had delivered Chitta and Capusles in her home.

5. On the basis of statement of co-accused Kajal, Chamkeela was arrested on 14.06.2021 at 3.05 a.m. for commission of offence punishable under Section 29 of the NDPS Act. During Jama Talashi ₹50,000/- were found in his pocket.

6. As per prosecution case, during interrogation Chamkeela had admitted supply of Chitta and Drug Capsules to main accused Kajal to help her in order to earn livelihood for her family.

7. After remaining in police custody till 14.06.2021, petitioner is in judicial custody since then. Challan in the case has been presented in the Court on 08.10.2021. Petitioner approached learned Special Judge Kangra, for enlarging him on bail, but his bail application was dismissed on 29.07.2021. Thereafter, petitioner filed bail applications Cr.M.P.(M) Nos.1615 of 2021 and 2151 of 2021, which were dismissed as withdrawn on 08.09.2021 and 03.12.2021 respectively.

8. Learned counsel for the petitioner has submitted that prosecution's claim with respect to confessional statement of Kajal is not reliable for the reason that co-accused Kajal, in another case FIR No.154 of 2020, registered under Section 21 of NDPS Act, in Police Station Damtal, remained in Jail since 12.10.2020 till 05.02.2021. Whereas, claim in disclosure/ confessional statement of co-accused Kajal is that she had been doing business in NDPS since last six months. The statement was recorded in June 2021 and six months before that would start from January 2021. Whereas, co-accused Kajal was in Jail till 05.02.2021 and was found involved in commission of offence under NDPS Act in October 2020. It has further been submitted that as per claim of the prosecution, recovered Capsules are about 281 grams, which is slightly more than commercial quantity of 250 grams and, therefore, being a borderline case petitioner, who is behind the bars for the last more than eleven months, deserves to be enlarged on bail, particularly when there

is nothing to connect the petitioner with co-accused Kajal and contraband recovered from the co-accused.

9. It has further been submitted that there is no telephonic connection between co-accused Kajal and petitioner-Chamkeela, no transaction of money between them and no other admissible evidence is available on record except only statement of main accused Kajal, which is also under cloud.

10. Further that keeping in view the judgment dated 10.01.2022, passed by the Supreme Court in Special Leave to Appeal (Crl.) No.242 of 2022, titled as *State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & another*, Order dated 13.12.2021, passed in Special Leave to Appeal (Crl.) No.5703 of 2021, titled as *Bharat Chaudhary vs. Union of India*, wherein taking note of judgment passed by the Supreme Court in *Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1*, Supreme Court has upheld the bail granted to the accused persons, who have been arrayed as accused and arrested on the basis of disclosure statement of co-accused only, without having any admissible evidence against them except the disclosure statement of co-accused and Call Detail Records (CDRs).

11. Learned counsel for the petitioner has also referred order dated 25.10.2021, passed by the Supreme Court in Criminal Appeal No(s). 1273 of 2021, titled as *Sanjeev Chandra Agarwal & another vs. Union of India*; and orders passed by Coordinate Benches dated 24.03.2022, in Cr.M.P.(M) No.468 of 2022, titled as *Neel Chand vs. State of Himachal Pradesh*; and

26.04.2022 in Cr.M.P.(M) No.677 of 2022, titled as *Sanjay Dutt vs. State of Himachal Pradesh*, to substantiate claim of entitlement of the petitioner for bail.

12. Learned Additional Advocate General has submitted that petitioner has committed a heinous crime causing damage to Nation, society, family and the life of individual and, therefore, prayer for dismissing the bail application has been made, particularly for quantity of contraband involved in present case.

13. Learned counsel for the petitioner has submitted that there is no evidence on record to connect the petitioner with recovery of contraband and there is nothing on record even to connect the petitioner remotely with recovery of contraband and, therefore, keeping in view judgments of Supreme Court, petitioner is entitled for bail.

14. Learned counsel for the petitioner has also submitted that petitioner is ready to furnish bail bonds to the satisfaction of the Court in case he is enlarged on bail and also to abide by any condition imposed upon him to assure his presence in the Court during trial.

15. Without commenting upon merit, rival contentions of the parties, but taking into consideration entire facts and circumstances of the case, including period of detention, submissions made by learned counsel for the parties and also factors and parameters propounded by the Courts including Supreme Court necessary to be considered at the time of

adjudication of bail, I find that petitioner may be enlarged on bail, at this stage.

16. Accordingly, present petition is allowed and petitioner is directed to be enlarged on bail, subject to his furnishing personal bond in the sum of ₹2,00,000/- with one surety in the like amount to the satisfaction of the trial Court/Special Judge, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioner/accused at the time of trial:-

- (i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;
- (ii) that the petitioner shall 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;
- (iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;
- (v) that the petitioner shall not misuse his liberty in any manner;
- (vi) that the petitioner shall not jump over the bail;
- (vii) that in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;
- (viii) that the petitioner shall not leave the territory of India without prior permission; and

- (ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

17. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

18. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

19. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

20. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

21. Petition is disposed of in aforesaid terms.

22. Copy dasti.

23. Petitioner is permitted to produce a copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the trial Court/Special Judge, and the

said Court shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.

(Vivek Singh Thakur),
Judge.

May 31, 2022
(Purohit)