

IN THE HIGH COURT OF HIMACHAL PRADESHAT SHIMLA**Cr.MP(M) No.1163 of 2024****Reserved on: 29.07.2024****Announced on: 31.07.2024**

Vijay alias Keshav

.....Petitioner

Versus

State of H.P.

...Respondent

Coram**Hon'ble Mr. Justice Ranjan Sharma, Judge**¹ *Whether approved for reporting? Yes*

For the petitioner: Mr. Anirudh Sharma, Advocate.

For the respondent: Mr. Rajat Chaudhary, Assistant Advocate General.

Ranjan Sharma, Judge

Bail petitioner, Vijay alias Keshav, [who is in custody since 11.02.2024], has come up before this Court seeking regular bail under Section 439 of the Code of Criminal Procedure ***[hereinafter referred to as 'Cr.P.C.']}***, for grant of bail originating from FIR No.26 of 2024, dated 06.02.2024, under Sections 21 & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, ***[hereinafter referred to as 'NDPS Act']}*** registered at

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

Police Station, Dharampur, District Solan [H.P.].

FACTUAL MATRIX:

2. Case set up by Mr. Anirudh Sharma, learned counsel for bail petitioner-accused [Vijay alias Keshav], is that bail petitioner is innocent and he has been falsely implicated and he has nothing to do with the commission of the offence. It is further averred that the bail petitioner is a resident of House No.27, Block No.2014, Sector 32-C, Chandigarh [U.T.], is a responsible citizen and there is no likelihood of his fleeing away from the investigation or the trial. The bail petitioner has furnished undertakings that in case he is released on bail, he shall appear in the investigation and trial and shall not cause any inducement, threat or promise to any person or persons acquainted with the facts of the case. Another undertaking has also been furnished that the bail petitioner shall not commit any similar offence in future.

2(i). It is averred in the instant bail application that the petitioner had filed an application for bail, before Learned Trial Court i.e. Learned Special Judge-II, Solan,

District Solan [H.P.], which was rejected on 20.04.2024, Annexure P-1. Thereafter, the petitioner filed the second bail application before this Court, which was withdrawn on 23.05.2024, Annexure P-2. The petitioner filed the third bail application before Learned Trial Court i.e. Learned Special Judge-II, Solan [H.P.], on 29.05.2024, Annexure P-3, which was also dismissed.

2(ii). The instant bail application also states that the petitioner has no criminal antecedents. During the pendency of the instant bail application, the petitioner had moves a Cr.MP No.2403 of 2024, enclosing copies of judgment dated 20.04.2024, Annexure A-1, whereby, the main accused Nikita Dutt was enlarged on bail. Along with this application an order dated 16.05.2024, Annexure A-2, has also been enclosed, indicating that second co-accused [Bishap Sain], has also enlarged on bail by the Learned Trial Court.

2(iii). In the above background, the bail petitioner has averred that the bail petitioner is ready to furnish

surety and shall not tamper with the administration of justice in any manner. Since the bail petitioner is in custody since 11.02.2024, therefore, the instant bail application was filed by sister of bail petitioner on his behalf.

PROCEEDINGS BEFORE THIS COURT:

3. The instant bail application [Cr.MP(M) No.1163 of 2024] was listed before this Court on 31.05.2024 when, on request of learned counsel for petitioner, the same was adjourned and the matter was then listed on 28.06.2024 when, after hearing learned counsel for petitioner and keeping in view the averments that the bail petitioner has no connection whatsoever either by way of CDR details or WhatsApp records or Bank transactions *inter se* the bail petitioner with two accused, Bishap Sain and Nikita Dutt. Therefore, this Court issued notice on 01.07.2024, directing the State Authorities to file the Status Report in the matter. The instant bail application was listed on 19.07.2024 when, State Authorities filed Status Report dated 19.07.2024, which was taken on

record and copy of the Status Report was furnished to learned counsel for the petitioner who prayed for some time to go through the same and make submissions. Finally, on 29.07.2024, the matter was heard by this Court.

STAND OF THE STATUS AUTHORITIES:

4. The Status Report filed by State Authorities dated 19.07.2024, narrates the sequence of events. The Status Report reveals that on 06.02.2024, police party headed by HHC Rajesh Kumar No.216, was on patrolling duty in the Government vehicle bearing Registration No.HP-14B-9570, towards Dharampur, Parwanoo, TTR and when, at about 6:10 p.m. the police party received information, when they were about one kilometer around Sanwara Toll Plaza, that a vehicle bearing Registration No.HP-33-0054 [Tigor] was coming from Panchkula to Solan and the persons travelling in the said car were carrying Heroin/Chitta. Accordingly, at about 7:30 p.m. on 06.02.2024, police stopped the aforesaid vehicle, in which Bishap Sain & Nikita Dutt were travelling. Police

searched the aforesaid two persons in the presence of witnesses as mandated by the norms and nothing was found. However, the vehicle in which they were travelling i.e. No.HP-33-0054 was searched by police party in which a plastic pouch containing brown coloured round shaped substance was recovered, which after weighing came out to be 11 grams of Heroin/Chitta. The recovery memo was prepared and thereafter Rukka was sent and FIR was registered by police.

4(i). Consequent upon the recovery of 11 grams of Heroin/Chitta from Bishap Sain & Nikita Dutt, as referred to above, both the accused were arrested by police on 07.02.2024, at about 02:50 a.m. (Night) and thereafter both were produced before Learned Jurisdictional Magistrate and then again on 09.02.2024 for preparation of the inventory as per norms.

4(ii). Consequent upon the arrest of main accused, Bishap Sain & Nikita Dutt, on 07.02.2024 and during the remand, both these accused reveal to police that they

have purchased Heroin/Chitta from a person in Zirakpur [Punjab], accordingly, the police party went to Zirakpur [Punjab], but no such person could be traced.

4(iii). The Status Report reveal that on 10.02.2024, the police party nabbed the bail petitioner, namely Vijay alias Keshav, who is resident of House No.27, Block No.2014, Sector 32-C, Chandigarh [U.T.] and he was formally arrested on 11.02.2024 by the police. After his arrest he was produced before Jurisdictional Magistrate i.e. Additional Chief Judicial Magistrate, Kasauli, District Solan, whereby, he was sent for four days police remand.

4(iv). During the period of remand of bail petitioner, it transpired that the bail petitioner, Vijay alias Keshav, had purchased Heroin/Chitta from Rahul of Zirakpur [Punjab]. Thereafter, police took the bail petitioner to Zirakpur [Punjab] to trace Rahul [Main Supplier], but no such person was found by the police.

4(v). The Status Report indicates that the bail petitioner, had resorted to WhatsApp voice calls and

WhatsApp chats with the arrested accused, Bishap Sain & Nikita Dutt, as referred to above. The Status Report further reveals that bail petitioner as well as arrested accused, Bishap Sain & Nikita Dutt, had adjusted their respective phones by putting their mobiles on Disappear Out Message Mode, due to which phones chats were deleted.

4(vi). The Status Report further indicates that on 01.02.2024, the main accused Bishap Sain had transferred an amount of Rs.1,000/- [Rupees One Thousand] to bail petitioner, Vijay alias Keshav, through Paytm online mode.

It is in this background Status Report was filed and Learned State Counsel has prayed for dismissal of bail application.

5. Heard Mr. Anirudh Sharma, Learned Counsel for the petitioner as well as Mr. Rajat Chaudhary, Learned Assistant Advocate General, for the Respondent and have perused the available material.

STATUTORY PROVISIONS:

6. In order to test, the claim, for enlargement on bail, it is necessary to have a recap of the provisions of Section 21 & 29 of the NDPS Act, which read as under:-

“Section 21 of the NDPS Act reads as under:

21. Punishment for contravention in relation to manufactured drugs and preparations-

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, **possesses, sells, purchases, transports, imports inter-State**, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable ,--

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one

lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

29. Punishment for abetment and criminal conspiracy.-

(1) **Whoever abets or is a party to a criminal conspiracy** to commit an offence punishable under this Chapter, shall, **whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy**, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.

MANDATE OF LAW:

7. Notably, the offences under the NDPS Act including Section 21 of the aforesaid Act, as in this

case are cognizable, therefore, the claim of the suspect-accused for post arrest bail-regular bail is to be examined/tested within the parameters prescribed of the Code of Criminal Procedure and also the *broad parameters* mandated by the Hon'ble Supreme Court regulating grant of bail in **Gurbaksh Singh Sibia versus State of Punjab** (1980) 2 SCC 565, **Ram Govind Upadhyay versus Sudarshan Singh** (2002) 3 SCC 598 ; **Kalyan Chandra Sarkar versus Rajesh Ranjan**, (2004) 7 SCC 528 ; **Prasanta Kumar Sarkar versus Ashish Chatterjee**, (2010) 14 SCC 496 ; reiterated in **P Chidambaram versus Directorate of Enforcement**, (2019) 9 SCC 24, mandating that the *bail {anticipatory or regular} is to be granted* where the case is frivolous or groundless and no prima facie or reasonable grounds exists which lead to believe or point out towards accusation ; and these parameters for regular bail have been reiterated in **Sushila Aggarwal versus State-NCT Delhi**, (2020) 5 SCC 01.

7(i). While dealing with the case for grant of regular bail, under Section 439 Cr PC, the three judges bench of Hon'ble Supreme Court, after reiterating the broad parameters, has held in **Deepak Yadav versus State of Uttar Pradesh, (2022) 8 SCC 559**, in Para 25 that the nature of the crime has a huge relevancy, while considering claim for bail.

7(ii). In the case of **Ansar Ahmad versus State of Uttar Pradesh, 2023 SCC Online SC 974**, the Hon'ble Supreme Court had expanded the horizon of the broad parameters, which are to be primarily taken into account, for considering the claim for regular bail or anticipatory bail as under:

11. Mr. R. Basant, the learned Senior Counsel appearing for one of the private respondents that the Court while granting bail is not required to give detailed reasons touching the merits or de-merits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. **The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:**

(i) The nature of the accusation weighing

- in the gravity and severity of the offence;
- (ii) The severity of punishment;
- (iii) The position or status of the accused, i.e. whether the accused can exercise influence on the victim and the witnesses or not;
- (iv) Likelihood of accused to approach or try to approach the victims/witnesses;
- (v) Likelihood of accused absconding from proceedings;
- (vi) Possibility of accused tampering with evidence;
- (vii) Obstructing or attempting to obstruct the due course of justice;
- (viii) Possibility of repetition of offence if left out on bail;
- (ix) The *prima facie satisfaction* of the court in support of the charge including frivolity of the charge;
- (x) The different and distinct facts of each case and nature of substantive and corroborative evidence.

12. We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, **would be required to be kept in mind while granting or refusing bail to an accused**. It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the **discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC**, as the case may be.

7(iii). In CBI versus Santosh Karnani, (2023) 6 SCALE 250, the Hon'ble Supreme Court has reiterated the illustrative time tested broad parameters which are required to be taken into account while considering the prayer for bail ; which have recently been reiterated

by the Hon'ble Supreme Court in the case of **State of Haryana versus Dharamraj, 2023 SCC OnLine SC 1085.**

7(iv). This Court is also conscious of the fact that as per the mandate of law, in **Criminal Appeal No 3840 of 2023**, titled as **Saumya Churasia versus Directorate of Enforcement**, decided on 14.12.2023, while considering the prayer for bail, though a *Court, is not required to weigh the evidence collected by the Investigating Agency meticulously, nonetheless, the Court should keep in mind* the nature of accusation; the nature of evidence collected; the gravity of offence; the role attributed to each of the accused; the severity of punishment prescribed for an offence(s); the character of the accused; the possibility of securing presence of accused during the trial; the apprehension of witnesses being tampered; the possibility of accused causing any threat or inducement to witnesses; by forming a *prima facie opinion in the context of above* broad-parameters and by balancing the

personal liberty of an accused vis-à-vis the societal rights and interests; and without delving into merits, so as to prevent any prejudice to either the accused or the prosecution.

OBJECT OF NDPS ACT:

8. Even in order to examine the claim for bail under the NDPS Act, this Court deems it necessary, to have a recap of the Preamble of the NDPS Act, which reads as under:

“An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions *for the control and regulation of operations* relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or *used in, illicit traffic in narcotic drugs* and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith.”

8(i). While dealing with the object of the NDPS Act, the Hon’ble Supreme Court in **Durand Didier, (1990) 1 SCC 95**, has mandated that the devastating menace of clandestine smuggling and illegal trafficking in drugs and substances has led to drug addiction amongst

a sizeable section of the society, the adolescents and the youth.

8(ii). This Court is conscious of the fact that though the rigors of Section 37(1)(b)(ii) of the NDPS Act, are not applicable in offences relating to Small Quantity or Intermediate Quantity but the fact remains, that the offences under the NDPS Act are “cognizable offences”, in terms of Section 37(1)(a) of the Act.

In *normal parlance*, the claim of an accused for bail has to be examined and tested in the light of the parameters mandated by the Hon’ble Supreme Court from time to time. Merely, because the accusation relates to either a small or Intermediate Quantity, shall neither confer an automatic right nor a vested right of bail. Involvement in offences relating to small or intermediate quantity does not give a license or leverage to a person to indulge in nefarious activities. The Court has to form an opinion regarding the involvement of an accused, from the Case Diary or the Status Report(s) or other available

material, and in normal situations, aforesaid material must prevail unless the same is contradicted and/or overcome or is disproved by other evidence which on the face of it casts doubt on the material(s) gathered by the prosecution. Enlargement on bail merely because the offence-accusation relates to small or Intermediate Quantity, despite, the fact that the material on record reveals the *prima facie case or reasonable grounds shall certainly result in adding wings to their flight and giving leverage to such suspect-accused to continue, expand and flourish in inhumane, prohibited, illegal and nefarious activities*. Persons including in these activities curtail the fundamental right of a commoner to live with dignity, by causing adversarial effect on his mental and physical state, including health who fall prey to these activities.

8(iii). *The exception to this principle, is that the enlargement on bail {be it relates to either small quantity or intermediate quantity of contraband} can be extended, on case to case basis, when the available*

material does not points towards the *prima facie* involvement and the past conduct being unblemished, subject to the fulfillment of other broad parameters, mandated by the Hon'ble Supreme Court, from time to time as detailed herein.

ANALYSIS OF CLAIM IN INSTANT CASE

9. Notwithstanding the rejection of earlier bail applications by Learned Trial Court on 01.03.2024 and on 24.05.2024 [Annexures P-1 & P-2], dismissing the same, this Court proceeds to examine the prayer of petitioner for bail in the instant case.

10. After taking into consideration the entirety of the facts and circumstances of the case; and the material on record; and the statutory provisions, and the mandate of law; as referred to above, this Court is of the considered view that the bail petitioner [Vijay alias Keshav], **is entitled to be enlarged on bail**, for the following reasons:-

10(i). No *prima facie* accusation is made out against the bail petitioner.

10(ii). The material on record, which is borne out from the *Status Report*, does not reveal any reasonable grounds to believe the accusation against the bail petitioner.

The *Status Report* filed by State Authorities dated 19.07.2024, indicates that police arrested two persons, namely, Bishap Sain & Nikita Dutt, after searching their vehicle, in which 11 grams of Heroin/Chitta was recovered on 06.02.2024 [Night] and consequent upon their arrest on 07.02.2024 at about 02:50 a.m. [Night] and the bail petitioner has no connection with two arrested persons namely, Bishap Sain & Nikita Dutt.

During investigation, on disclosure by Bishap Sain & Nikita Dutt, arrested accused, the police was informed that both the accused had purchased the Heroin/Chitta from a person at Zirakpur [Punjab]. That being so, once the Heroin/Chitta was purchased by a person at Zirakpur [Punjab] then, it appears to be

highly improbable as to why and what basis the police implicated and arrested the bail petitioner [Vijay alias Keshav] on 11.02.2024, who is a resident of House No.27, Block No.2014, Sector 32-C, Chandigarh [U.T.].

The *Status Report* reveals that bail petitioner [Vijay alias Keshav] was arrested allegedly, on the disclosure made by two arrested accused Bishap Sain & Nikita Dutt, before the police.

10(iii). Leaving everything aside, there is no doubt that the petitioner herein has been booked under Section 29 of NDPS Act, that too on the basis of statement of co-accused coupled with the fact that there is no other supportive material on record, in the Status Report, either by way of CDRs or Bank Transactions or otherwise, revealing any connection of the bail petitioner [Vijay alias Keshav] with the two accused Bishap Sain & Nikita Dutt, therefore, in view of the mandate of the Hon'ble Apex Court, in case, titled as **Tofan Singh vs. State of Tamil Nadu, (2021) 4 SCC 1**, the disclosure

statement, in absence of any other supportive material is inadmissible in following terms:-

“155. Thus, to arrive at the conclusion that a confessional statement made before an officer designated under section 42 or section 53 can be the basis to convict a person under the NDPS Act, without any non obstante clause doing away with section 25 of the Evidence Act, and without any safeguards, would be a direct infringement of the constitutional guarantees contained in Articles 14, 20(3) and 21 of the Constitution of India.

156. The judgment in Kanhaiyalal (supra) then goes on to follow Raj Kumar Karwal (supra) in paragraphs 44 and 45. For the reasons stated by us hereinabove, both these judgments do not state the law correctly, and are thus overruled by us. Other judgments that expressly refer to and rely upon these judgments, or upon the principles laid down by these judgments, also stand overruled for the reasons given by us.
157. On the other hand, for the reasons given by us in this judgment, the judgments of Noor Aga (supra) and Nirmal Singh Pehlwan v. Inspector, Customs (2011) 12 SCC 298 are correct in law.
158. We answer the reference by stating:

- (i) That the officers who are invested with powers under section 53 of the NDPS Act are “police officers” within the meaning of section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.
- (ii) That a statement recorded under section 67 of the NDPS Act cannot be used as a

confessional statement in the trial of an offence under the NDPS Act.”

After taking into account the entirety of the facts and circumstances, as referred to above, the accusation against the bail petitioner is not made out, at this stage.

11. The State Authorities could not implicate the bail petitioner, by arresting him on 11.02.2024, merely on the basis of an Online-Paytm Transaction of Rs.1,000/- [Rupees One Thousand] on 01.02.2024, allegedly between the arrested accused Bishap Sain and alleging the said transaction to be with the bail petitioner.

The above plea of the State Authorities, is on the face of perverse when, a perusal of Paytm-Online transaction entry dated 01.02.2024, reveals that the aforesaid Paytm Transaction was between accused, Bishap Sain with one Bains Service Station and the aforesaid entry has nothing to do with the bail petitioner, Vijay alias Keshav, in the instant case.

The facts in the Status Report, implicating the bail petitioner, on the stray entry of Paytm transaction of Rs.1,000/- cannot be made the basis for detaining the bail petitioner needlessly, in view of law laid down by Hon'ble Supreme Court in **Special Leave to Appeal [CRL] No.5822/2024**, titled as **Jeet Ram vs State of Himachal Pradesh**, to support his contention, which reads as under:-

“3. The appellant is charged with the offences punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Heroin of the quantity of 8.54 grams was recovered from the co-accused. We have perused the allegations contained in the charge-sheet against the appellant. **The allegation seems to be that there was a transaction between the appellant and the co-accused under which a sum of Rs.1,000/- was transferred by the appellant to the co-accused by Google Pay.**”

In the background of the mandate of law in the case of **Jeet Ram**, (*supra*) once the petitioner-accused, Jeet Ram, was released on bail, keeping in view the meagre/stray entry of transfer of Rs.1,000/- by Google Pay account, as in this case.

In the above background, stray entry of Paytm

of Rs.1,000/- only, cannot be sole basis for inferring the connection of bail petitioner with two arrested persons Bishap Sain & Nikita Dutt, as referred to above.

11(i). Admittedly, once, the contraband and Heroin/Chitta of 11 grams was recovered from two accused, Bishap Sain & Nikita Dutt, who were arrested by police on 07.02.2024 and there is nothing on record to point out that the bail petitioner had any involvement in the aforesaid recovery or illicit trafficking, then, the accusation is not made out against the bail petitioner, at this stage. Further, the fact as to whether, the bail petitioner had remitted/transferred the amount of Rs.1,000/- by ways of Paytm to arrested accused Bishap Sain is a matter, which is yet to be proved in accordance with law during the trial. The detention of bail petitioner, on the basis of mere stray-single Paytm entry of Rs.1,000/-, which is yet to be proved during the trial, in accordance with law in considered view of this Court shall certainly amount to implicating the bail petitioner,

on the basis of mere conjectures or suspicion, which is yet to be proved. Unless and until the accusation is proved during the trial, the bail petitioner is to be treated innocent in the eyes of law, in view of the mandate of Hon'ble Supreme Court in **Guddan alias Roop Narayan Versus State of Rajasthan, 2023 SCC OnLine SC 1242**, has outlined that the object of bail is neither punitive and preventative, in the context of Article 21 of the Constitution of India, in following terms:-

"11. In the case of Sanjay Chandra V. Central Bureau of Investigation, (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. **The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment**, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of **refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct** whether the accused has been convicted for it or not or to **refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.**

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the **jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.** In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and **normal rule of bail system.** It **transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.**

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that **refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."**

12. Further, in the case of Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66, this Court, while hearing a bail application held that **conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail.** This Court held as under:

"We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law.

Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. ***But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper.*** It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police."

In the backdrop of the mandate of law in ***Guddan alias Roop Narayan (supra)*** since neither any *prima facie* accusation nor reasonable grounds exist, then, the detention of the bail petitioner will lead to deprivation of liberty of the bail petitioner.

11(ii). While dealing with the concept of bail and personal liberty of an accused under Article 21 of the Constitution of India, the Hon'ble Supreme Court, in ***Criminal Appeal No.2787 of 2024***, titled as ***Javed Gulam Nabi Shaikh Versus State of Maharashtra and Another***, Hon'ble Apex Court, held as under:-

“18 **Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime.** Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19 **If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.**

20 **We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until**

proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

- 21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.
- 22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside."

12. Notably, once the two main accused, Bishap Sain & Nikita Dutt, from whom the contraband was recovered and were arrested have been enlarged on bail by the Learned Trial Court, therefore, the bail petitioner [Vijay alias Keshav] who at this stage, nowhere connected with the alleged offence and no recovery has been made and nothing has been spelt out or placed on record connecting the bail petitioner with the accusation, therefore, on the principle of parity between the bail petitioner and two other co-accused, petitioner deserves to be enlarged on bail on this ground also.

13. The Status Report does not point out that any adversarial circumstance, objecting to the detention of bail petitioner, at this stage.

14. The Status Report indicates that investigation is complete and the challan has been presented before the jurisdictional Court on 04.04.2024. Even, the Status Report does not point out any criminal antecedents of the bail petitioner. Moreover, once the recovery of 11 grams of Heroin/Chitta was made from Bishap Sain & Nikita Dutt on 06.02.2024 for which they were arrested on 07.02.2024 and the bail petitioner [Vijay alias Keshav] was neither travelling with them and had no connection with these two accused and no recovery was made from bail petitioner at any point of time with respect to the accusation in the instant case then, in absence of any material connecting the bail petitioner with the recovery, sale, purchase, transportation or inter-state import of Heroin/Chitta/Contraband then the accusation is not borne out against the bail petitioner, at this stage.

CONCLUSION:

15. In view of the above discussion, the instant **petition is allowed**, and the State Authorities are

directed to enlarge the petitioner [Vijay alias Keshav] on bail, subject to observance of the following conditions:-

- (i) Respondent-State Authorities shall release the bail petitioner [Vijay alias Keshav] on furnishing personal bond and surety bond to the tune of Rs.1,00,000/- [Rupees One Lac] each to the satisfaction of Learned Trial Court concerned;
- (ii) Petitioner shall abide by all other conditions, as may be imposed by the Learned Trial Court, if any, in view of this order;
- (iii) Petitioner shall neither involve himself nor shall abet the commission of any offence hereinafter. Any involvement or abetting shall entail the withdrawal of concession in terms of this order.
- (iv) Petitioner shall disclose his functional E-Mail IDs/WhatsApp number and that of his surety to the Learned Trial Court.
- (v) Petitioner shall not hinder the smooth flow of the investigation and shall join the investigation, as and when called, by the Investigating Agency;
- (vi) Petitioner shall not jump over the bail and also shall not leave the country without prior information of the Court;
- (vii) Petitioner shall not tamper with the witnesses or the evidence in any manner;
- (viii) Petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or the witnesses;
- (ix) It is clarified that violation of any of the conditions imposed hereinabove, shall entail cancellation of bail automatically; and

(x) State Authorities are free to move this Court for alteration/modification of this Court, for violation as in (i) to (iv) supra, in the facts and circumstances, so necessitates, at any time herein-after.

16. The observations made in this judgment shall not be construed in any manner as an indicitive of findings, for or against the parties herein, either for the purpose of investigation or for trial, thereafter, in any manner, which shall proceed, independent of any of the observations herein, in accordance with law.

17. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may verify passing of order from Website of the High Court.

Pending application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

July 31, 2024
(Shivender)

**TARUN
MAHAJAN**

Digital signature of TARUN MAHAJAN
DN: C=IN, O=HIGH COURT OF HIMACHAL
PRADESH, OU=HIGH COURT OF HIMACHAL
PRADESH SHIMLA, Phone=
887ab774dfe8f43e95a41c7aa2babcb4eece8f
82edfd5f56ec39f8e6b442b68, PostalCode=
171001, S=Himachal Pradesh,
SE=Himachal Pradesh, ST=Himachal
3f6ebe501e8d7cd73d0e5a5294bcc03f198d7
d66b105bbf507179673109f5, CN=TARUN
MAHAJAN
P
Reason: I am the author of this document
Location: 12345678
Date: 2024.07.31 17:38:40+05'30'
Foxit PDF Reader Version: 2023.2.0