

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 43 of 2021
Reserved on: 26.03.2021
Decided on: 01.04.2021

Sharif KhanPetitioner
Versus
Narcotics Control Bureau ...Respondent

Coram
The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.
Whether approved for reporting?¹ Yes.

For the petitioner: Mr. Dhiraj Thakur, Advocate.
For the respondent/NCB: Mr. Ashwani Pathak, Sr. Advocate, with
Mr. Sandeep Sharma, Advocate.

Chander Bhusan Barowalia, Judge.

The instant petition is maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in Crime No. 15 of 2016, dated 15.04.2016, under Sections 8, 18, 29 and 60 of the ND&PS Act, registered by Narcotic Control Bureau, Chandigarh.

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

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

3. Tersely the facts of the case are that on 14.04.2016 NCB, Chandigarh, got a secret tip-off that one Sanjay Patidar is coming to Mandi from Madhya Pradesh in new Force Traveler bus for delivering a consignment of opium. Acting upon the secret tip-off, a team was constituted and at about 11:15 p.m. the said team alongwith two independent witnesses reached Dashmesh Dhaba Jaghon, where the said Traveler bus, having No. MP11TR-N 6107, was parked. The door of the vehicle was locked from inside and a person was sleeping inside. On being knocked, the said person opened the door and divulged his name as Sanjay Patidar, resident of Madhya Pradesh. He further divulged that he is driver and taken the vehicle from Force India Ltd. Patampur, District Dhar, MP for delivering it to Force Motor Ltd. Depot, Rani Ke Bain, VPO Gutkar, Tehsil Sadar, District Mandi. Thereafter, personal search of Sanjay Patidar was conducted, but nothing incriminating was found. Said Sanjay Patidar himself handed over a polythene packed, which was kept under the last seat of the bus, which contained some sticky substance and it was opium. On weighment, the contraband was found to be 3 (three) Kgs. Thereafter, all the codal formalities were conducted. Sanjay Patidar divulged that the owner of the recovered contraband is one Sharif @ Sharif Khan (petitioner herein). During the course of further investigation it was unearthed that the petitioner has already been arrested by NCB Chandigarh in connection with seizure of 2.800 kgs of opium and the petitioner in his statement under Section 67 of the ND&PS Act, disclosed that he is

owner of 3 (three) kgs of opium. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found actively involved selling the contraband and he was also found involved in illegally transporting 3(three) Kgs of opium, which is a commercial quantity. In case the petitioner, at this stage, is enlarged on bail, there is every possibility that he may flee from justice or tamper with the prosecution witnesses, as he is resident of Madhya Pradesh, so the bail application may be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Senior Counsel for the NCB and gone through the records, carefully.

5. Learned Counsel for the petitioner, has argued that the petitioner is innocent and has been falsely implicated in the instant case. He has further argued that the petitioner was not at all involved in the case. The petitioner is 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. He has argued that the petitioner cannot be kept behind the bars for an unlimited period, especially when investigation is complete, his custody is not at all required, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Senior Counsel for the NCB has argued that the petitioner was the main kingpin and he, in fact, was the owner of 3 (three) kgs of opium, which is a commercial quantity, and was allegedly recovered by

the NCB team from co-accused Sanjay Patidar. He has further argued that the petitioner is resident of Madhya Pradesh and in case at this stage, if he is enlarged on bail, he may flee from justice or tamper with the prosecution evidence. He has argued that the petitioner is the main supplier of the narcotics and in case he is enlarged on bail, he may again indulge in such activities. He has prayed that considering the quantity of the recovered contraband and also the fact that the petitioner is resident of Madhya Pradesh, the instant bail petition be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is behind the bars for the last more than four years and he cannot be kept behind the bars for an unlimited period, especially when investigation is complete and now nothing remains to be recovered at his instance. He has argued that considering the overall facts and circumstances of the case, the bail petition may be allowed and the petitioner be enlarged on bail. In order to support his arguments, the learned counsel for the petitioner has drawn attention of this Court to the following judicial pronouncements:

1. ***Chitta Biswas Alias Subhas vs. The State of West Bengal, Criminal Appeal No (s) 245/2020 (SLP(Crl.) No. 8823/2019), decided by Hon'ble Supreme Court&***
2. ***Amit Singh Moni vs. State of Himachal Pradesh, Criminal Appeal No. 668 of 2020 (Arising Out of SLP (Criminal) No. 3813 of 2020), decided by Hon'ble Supreme Court.***

Now, after incisively perusing the above cited judgments, this Court finds that the above judgments are of no help to the petitioner, as in the instant case the petitioner is resident of Madhya Pradesh and there is possibility that in case bail is granted he may flee from justice or tamper with the prosecution evidence. Moreover, huge quantity, i.e. 3 (three) kgs of opium was recovered, which was allegedly owned by the petitioner. It has come in the investigation that the petitioner is main supplier of the contraband and he was actively involved in selling contraband, thus the present case does not fall within the category of cases as held in the judgments above. The ratio of the above judgments is not applicable to the present case. Even otherwise, there can never be a straight-jacketed formula or fixed pre-drawn line of law for granting or refusing bail. Each and every petition, seeking bail, has to be seen with the magnifying lenses of facts and circumstances of that particular case. The vital aspects in granting or refusing bail can be the possibility of accused's fleeing, in case the bail is granted, the possibility of the accused's tampering with the prosecution evidence, the gravity and seriousness of the offence, the manner in which the same is alleged to have been committed etc. etc. and there may be innumerable other aspects/reasons for granting or refusing bail. Thus, no straight-lined formula can be adhered to in granting or refusing bail and each case has to be tested with the valuable aid of its own facts and circumstances, vis-à-vis, some other important aspects and law.

So, the judgments, as cited by the learned counsel for the petitioner, are of no help to the petitioner.

7. At this stage, considering the quantity of the recovered contraband, i.e. 3 (three) kgs, which is commercial quantity, the fact that the petitioner is resident of Madhya Pradesh and in case at this enlarged on bail, there is possibility that he may flee from justice or tamper with the prosecution evidence, considering the role of the petitioner in the alleged offence, as it has come on record that the petitioner was the main supplier of the contraband and also considering all other vital aspects, which emerge, and without discussing the same elaborately at this stage, this Court is of the opinion that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

8. In view of the foregoing discussions, the petition, which sans merits, deserves dismissal and is accordingly dismissed.

9. Needless to say that the observations made hereinabove are only confined for the adjudication of the instant petition and shall have no bearing, whatsoever, on the merits of the main case, which shall be adjudicated on its own.

(Chander Bhusan Barowalia)
Judge

1st April, 2021
(virender)