

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MP(M) No. 675 of 2021  
Reserved on: 7<sup>th</sup> April, 2021.  
Date of Decision: 08<sup>th</sup> April, 2021.**

**Surender Kumar** **...Petitioner.**

**Versus**

**State of H.P.** **...Respondent.**

**Coram:**

**The Hon'ble Mr. Justice Anoop Chitkara, Judge.**

**Whether approved for reporting?<sup>1</sup> NO**

**For the petitioner : Mr. Yashveer Singh Rathore, Advocate.**

**For the respondent : Mr. Rajat Chauhan, Law Officer.**

<b>FIR No.</b>	<b>Dated</b>	<b>Police Station</b>	<b>Sections</b>
<b>62/18</b>	<b>23.2.2018</b>	<b>Sadar Mandi, District Mandi</b>	<b>20 &amp; 29 NDPS Act and 181 M.V. Act</b>

**Anoop Chitkara, Judge.**

An under-trial prisoner, in custody since 23<sup>rd</sup> February, 2018, for possessing commercial quantity of Charas, has come up before this Court under Section 439 of CrPC, seeking bail.

2. Earlier, the petitioner had filed a petition under Section 439 CrPC before this Court. However, vide order dated 04.02.2021, the same was dismissed.

3. The petition is silent about criminal history, however, Mr. Yashveer Singh Rathore, learned Counsel for the bail petitioner states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on 23<sup>rd</sup> February, 2018, the Police officials of the Police Station mentioned above, had erected a Nakka at a place known as Vindravani on National Highway No.21 and were checking the

<sup>1</sup> **Whether reporters of Local Papers may be allowed to see the judgment?**

vehicles. At around 10.00 a.m. one car came from the Pandoh side, which was signaled to stop. Five youth were sitting in this Car. When the Police officials asked the driver to show the documents, he failed to produce either the documents of the vehicle or the driving licence. It raised a suspicion that vehicle may be of theft. The police inquired from them about the ownership of the car, but they could not give any satisfactory reply. It prima facie made the investigator to believe that the vehicle is a stolen property and they are concealing something. Then, with a view to search the vehicle, the investigator associated two local witnesses and also called an automobile mechanic. The owner revealed his name as Surender Kumar (A-1). The person sitting on the front seat revealed his name as Amit Singh Moni (A-2) and the persons sitting on the rear seat as Vijay Bharat (A-3), Vikram Singh (A-4), and Amar (A-5). The cover of the front left door was found to have not been properly fixed. When raised, the police could notice some packet inside. After that they removed the cover of the left door and inside noticed brown coloured packets. On opening the same, it had Charas, which when weighed on electronic scale measured 3 kilogram 285 grams. Thereafter the police conducted other procedural requirements under NDPS Act and Cr.PC and arrested the accused. Based on these allegations, the Police registered the FIR mentioned above.

5. Learned counsel for the bail petitioner submits that the evidence collected against the petitioner is legally inadmissible. He also places reliance upon the decisions of this Court in Chuni Lal v. State of H.P., CrMPM 1722 of 2020; Beli Ram v. State of Himachal Pradesh, Cr.MP(M) No.1756 of 2020, and Sanjay Kumar v. State of Himachal Pradesh, CrMPM 2173 of 2020.

6. Mr. Rajat Chauhan, Law Officer submits they do not intend to file the status report because the entire facts have already been mentioned in the order passed by this Court in Cr. MP(M) No. 34 of 2021 and other requisite documents are part of the petitioner. Therefore, this Court had observed that the status report was not required to be filed. He further submits that the Police have collected sufficient evidence against the accused, which prima facie points out towards his involvement. He also contended that the quantity involved is commercial, and restrictions of S. 37 of the NDPS Act do not entitle the accused for bail. While opposing the bail, the alternative

contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

7. The decision of this Court in **Satinder Kumar** versus **State of H.P.**, Cr.MP(M) No. 391 of 2020, decided on 4<sup>th</sup> Aug 2020, covers the proposition of law involved in this case, wherein this Court has held that Satisfying the fetters of S. 37 of the NDPS Act is candling the infertile eggs. The ratio of the decision is that to get the bail in commercial quantity of substance, the accused must meet the twin conditions of S. 37 of NDPS Act.

8. Learned counsel for the petitioner has placed reliance on the judgment, vide which the Supreme Court had released one of the accused Amit Kumar Moni (A-2), who was sitting on the front left seat and the charas was recovered from front left window i.e. adjacent to him. The order of Hon'ble Supreme Court, passed in Criminal appeal No.668 of 2020, reads as follows:

“ Leave granted.

This appeal challenges the order dated 10.07.2020 passed by the High Court of Himachal Pradesh, Shimla in CrI. M.P. (M) No.1107 of 2020.

The appellant (accused no.2) is facing prosecution in Case No.135 of 2018 on the file of the Special Judge-II, District Mandi, Himachal Pradesh in connection with crime registered pursuant to FIR No.62 dated 23.02.2018 with Police Station Sadar Mandi, District Mandi, Himachal Pradesh, for the offences punishable under Sections 20 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985.

The application preferred by the appellant for release on bail under Section 439 of the Code of Criminal Procedure, 1973 ('the Code', for short) having been rejected by the High Court, the appellant has preferred this appeal.

According to the case of the prosecution, in a vehicle occupied by five persons including the appellant, contraband material ("Charas") weighing 3285 grams was found concealed behind the panel of the front left side door of the vehicle.

It is accepted that seven witnesses have already been examined in the trial and seven more witnesses are yet to be examined. The last witness was examined in February 2020 whereafter there is no further progress in the trial because of the COVID-19 pandemic situation. It is also accepted that the appellant was taken in custody on 23.02.2018 and, as such, he has completed more than 2 years 7 months of actual custody.

Considering the facts and circumstances on record, in our view, the appellant is entitled to the benefit under Section 439 of the Code. We order accordingly.

The appellant shall be produced before the Trial Court within three days from today and the Trial Court shall release him on bail, subject to such conditions as the Trial Court may deem appropriate to impose to ensure his presence and participation in the pending trial.

We may also observe that since seven witnesses have already been examined, the Trial Court shall conclude the trial as early as possible. With the aforesaid observations, the appeal is allowed.”

9. The case of the petitioner is on different footings. He was the person having the keys of the vehicle and thus had dominion and control over the same. Other persons may not be aware that what was concealed by the person who had the keys of the vehicle. As such the accused is not entitled to bail. There is no changed circumstances, which would entitled the petitioner to file the present petition after the dismissal of his bail petition on February 04, 2021.

10. Given above, this petition is dismissed. As noted above, the Hon'ble Supreme Court had also observed that the trial Court shall conclude the trial as early as possible. After that this Court had requested the Sessions Judge to expedite the trial on priority basis.

11. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

The petition is dismissed.

**(Anoop Chitkara),  
Judge.**

**April 08, 2021 (ps).**