



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P. (M) No. 946 of 2021

Reserved on: 26.6.2021

Date of decision: 7.7.2021

Raj Kumar.

Versus

State of Himachal Pradesh.

...Petitioner.

...Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

*Whether approved for reporting?*¹

For the Petitioner: **Mr.Rahul Singh Verma, Advocate,**
through Video Conferencing.

For the Respondent: **Mr.Raju Ram Rahi, Deputy Advocate General, through Video Conferencing.**

Vivek Singh Thakur, Judge

Petitioner has been arrested on 6.3.2021, under Section 27A of Narcotic Drugs and Psychotropic Substances Act (hereinafter in short 'NDPS Act') and Section 212 of the Indian Penal Code (hereinafter in short 'IPC') in case FIR No. 21 of 2021, dated 11.2.2021, registered under Sections 15, 29, 27A of NDPS Act and Section 212 IPC, in Police Station Paonta Sahib, District Sirmour, H.P.

2. Perusal of status report, filed by respondent-State, reveals that on 11.2.2021, on the basis of reliable information, Police Party had recovered and seized 200.278 Kilograms of Poppy Straw from a truck and 150.500 Kilograms Poppy Straw from pits of sand in Khera Valley on the bank of Yamuna river and, thereafter on the basis of link evidence some of accused persons were arrested on 19.2.2019. On interrogation during Police Custody, on 20.2.2021, on disclosure of

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

accused Mohamad Deen 101.530 Kilograms of Poppy Straw was recovered from Satiwala Jungal/Khud.

3. During investigation, it has come on record in statements of co-accused that one Parveen Kumar, who is son-in-law of petitioner, is also one of the main accused, whereupon efforts were made to trace and apprehend him. On 15.2.2021, his wife was informed and asked to join investigation, but on the same date Parveen Kumar along with his wife and daughter had hidden himself in his in-laws at Atalpur, Meerut, Uttar Pradesh. On receiving reliable information, Police Party reached Meerut on 2.3.2021 and, with the help of local Police, it had come in the knowledge of Police party that petitioner and his wife Anita, instead of sending their son in law Parveen Kumar to Police Station Paonta Sahib, have sent him to Rajasthan to stay with relative.

4. It is further stated in the status report that Parveen Kumar was harboured by his father-in-law and mother-in-law, despite the fact that he had committed a serious offence and also ignoring the fact that Rakesh Kumar, brother of Parveen Kumar, since 15.2.2021, had been informing father-in-law and mother-in-law of Parveen Kumar to produce Parveen Kumar before Police. However, petitioner neither produced Parveen Kumar before the Police nor joined investigation himself, whereas Rakesh Kumar by understanding the seriousness of the case had brought all facts in the knowledge of the petitioner, however, petitioner, after harbouring Parveen Kumar in his house had sent him to other place situated in Rajasthan. As petitioner did not cooperate legally with the Police, upon this Section 27A of NDPS Act and Section 212 of IPC were also added in the challan and petitioner

was arrested on 6.3.2021. Petitioner, after remaining in Police custody on his arrest on 6.3.2021, is in judicial custody since 15.3.2021.

5. Learned counsel for the petitioner has submitted that accusation against the petitioner is that he had harboured his son-in-law in his house, whereas the fact is that petitioner was not knowing about involvement of his son-in-law in commission of offence under NDPS Act, as alleged by prosecution and he had not harboured his son-in-law as an accused, but due to ignorance about his involvement in the offence, he had permitted his family to stay in his house, who had left the house before arrival of the Police from Paonta Sahib but without informing anybody and, therefore, it is stated that it was not possible for the petitioner to trace his son-in-law. He has further submitted that petitioner has been implicated and arrested in the case only in order to create a pressure upon Parveen Kumar to surrender, but despite that Parveen Kumar has not surrendered, but the petitioner is suffering for no fault on his part. Lastly, it is stated that as and when petitioner would know about whereabouts of Parveen Kumar, he undertakes to disclose/inform it to the Police/Court. He has submitted that for assuring the arrest of accused Parveen Kumar, personal liberty of the petitioner cannot be curtailed and petitioner is also ready to furnish local surety and, therefore, he has advocated for release of petitioner on bail.

6. It is also pointed out that Parveen Kumar had approached this Court seeking anticipatory bail under Section 438 Cr.P.C in April,

2021 by filing Cr.M.P. (M) No. 564 of 2021 which was dismissed on 9th April, 2021.

7. Considering the entire facts and circumstances of the case placed on record by way of status report, and also submissions of learned counsel for the petitioner and respondent-State, I am of the opinion that in present case, petitioner can be treated differently than the other main accused. The petitioner has no antecedents regarding commission of offence under NDPS Act. Considering principles and factors relevant to be considered at the time of deciding bail application with reference to entire facts and circumstances of the case, nature and gravity of offence alleged to be committed by petitioner, I am of the opinion, that at this stage, petitioner is entitled to be enlarged on bail.

8. Accordingly, petitioner is ordered to be enlarged on bail, subject to furnishing personal bond in the sum of ₹1,00,000/- with one local surety as undertaken, in the like amount to the satisfaction of trial Court/Special Judge within a period of two weeks from today upon such further conditions as may be deemed fit and proper by the trial Court, including conditions enumerated hereinafter, so as to ensure the presence of the accused during trial and also subject to following further conditions:-

- (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 the petitioner shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during trial;*
- (viii) *that the petitioner shall not leave India without permission of the Court.*

9. 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.

10. In case the petitioner violates any conditions 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.

11. Learned 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.

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

13. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not

insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms. ◇

Dasti copy on usual terms.

7th July, 2021
(Keshav)

(Vivek Singh Thakur),
Judge.

High

Court

