



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.1198 of 2021

Decided on: 8th July, 2021

Abhishant Minhas

.....**Petitioner**

Versus

State of Himachal Pradesh

.....**Respondent**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Petitioner: Mr. Sanjay Jaswal, Advocate.

For the Respondent: Mr. Anil Jaswal, Additional Advocate
General.

(Through Video Conference)

Jyotsna Rewal Dua, Judge (Oral)

Petitioner is co-accused along with four others in FIR No. 81/2020, dated 23.6.2020 registered at Police Station, Damtal, District Kangra under Sections 21, 22 and 29 of the Narcotic Drugs & Psychotropic Substance Act, 1985 (in short NDPS Act). He was arrested on 24.06.2020 and is thus seeking regular bail by means of the instant bail application.

2. Heard learned counsel for the parties and gone through the status report filed by the respondent-State.

¹ Whether reporters of print and electronic media may be allowed to see the order?

3. Prosecution case against the petitioner is that:-

3(i). On 23.6.2020 a police party was patrolling in certain areas under the jurisdiction of the concerned police station. At around 4:00 p.m., it reached about 100/150 meters ahead of Bhadroya, where it noticed a vehicle parked on the left side of the road facing Kandwal. The solitary parked vehicle in that area with four occupants therein including a girl raised the suspicion in the minds of patrolling party personnel. It also appeared to the police party that the girl sitting on the front seat of the vehicle alongside the driver had thrown out something. Therefore, the police personnel approached the vehicle and its occupants were asked the reasons for stopping/parking the vehicle there. No satisfactory answer was given by the occupants to the queries of the police personnel, rather they appeared to be perplexed. Being questioned, the girl denied having thrown out anything. The vehicle occupied by these four persons bore registration No.HP-33B-8550. Two local persons passing the road at the time were associated as independent witnesses. The girl was taken outside the vehicle with the help of lady Constable. Search of the vehicle was carried out in accordance with law after associating the independent witnesses. During search, a

substance kept in a polyzip envelop was recovered from the middle of front seats. On the basis of experience of patrolling party personnel, the recovered substance was determined as Heroin, however, the Drug Detection Kit was requisitioned for confirming its nature. In the meanwhile, all the occupants of the vehicle disclosed their identities as Sidhant Thakur (the driver), Samridhi Bedi-the girl occupying the front seat adjoining to the driver seat and Rajat & Abhishant Minhas (petitioner herein) occupying the back seat. Further search of the vehicle led to recovery of 1102 number of Ridley capsules underneath the seat adjoining to the driver seat i.e. the seat occupied by Samridhi Bedi. The Drug Detection Kit confirmed the recovered contraband as Heroin. Weight of this contraband so recovered from the middle of front seat of the vehicle, measured 8.38 grams on the electronic scale. Entire procedure contemplated under Code of Criminal Procedure as well as under the Narcotic Drugs and Psychotropic Substances, Act was followed leading to registration of FIR in question. All the four accused persons were arrested on 24.06.2020.

3(ii). According to the status report, during investigation, the accused persons including the petitioner

disclosed that they were drug addicts and to meet the expenses in purchasing the drugs, they also used to sell the same. The Heroin and capsules recovered from the car were stated to have been purchased by the accused persons from one Surinder Pal @ Chandi @ Veera s/o Gulzari Lal, r/o village Chhanni, Tehsil Indora, District Kangra. Co-accused Samridhi Bedi also disclosed during investigation that she used to purchase the capsules and Heroin from said Surinder Pal. Sidhant Thakur @ Kannu also disclosed during investigation about purchasing Heroin and capsules from Surinder Pal. The statement was allegedly corroborated by the other accused persons as well.

3(iii). Call Detail Reports of the mobile No. 88604-30908 belonging to Samridhi Bedi were obtained by the investigating agency. As per these reports on 23.6.2020 itself i.e. the day of the incident, Samridhi Bedi had spoken to Surinder Pal on his mobile No. 84274-97517 twelve times. According to the status report, all the accused persons during investigation disclosed that they are habitual drug addicts. Samridhi Bedi and Sidhant Thakur in past also have purchased Heroin and capsules from Surinder Pal.

3(iv). Status report indicates following criminal antecedents of the petitioner:

- a) Case No. 12/2019, dated 24.1.2019 under Section 341, 323, 324 and 34 IPC.
- b) Case No. 63/2019 dated 11.5.2019 registered under Section 354(D) and 12, 17 of POCSO Act at Police Station Shahpur.

3(v). State Forensic Science Laboratory, (SFSL), Junga submitted its report, according to which, the recovered Ridley Capsules contained psychotropic substance Tramadol Hydrochloride. Total weight of Ridley capsules recovered from the vehicle in question occupied by all the four accused persons was 706.200 grams and total weight of the powder of these capsules was 600.600 grams.

According to the status report, Surinder Pal from whom the petitioner and other co-accused persons had allegedly procured the contraband had initially absconded. His anticipatory bail application, Cr.MP(M) No.1146 of 2020 was dismissed as withdrawn by this Court on 16.7.2020. His second bail petition No.Cr.MP(M) No.1314 of 2020 for grant of anticipatory bail without giving detail of his first bail petition, was dismissed on 13.8.2020. His third anticipatory bail application No.1501 of 2020 filed without giving details of previous two bail applications, was

dismissed on 7.9.2020. Investigating Agency was able to nab and arrest him only on 16.10.2020. His fourth bail petition, bearing Cr.MP(M) No.967 of 2021, for grant of regular bail has been dismissed by this Court on 1st July, 2021.

Cr.MP(M) No.1910 of 2020 preferred by petitioner in this Court was withdrawn by him on 11th November, 2020 with liberty to approach the learned Trial Court. His regular bail was rejected by learned trial Court on 22.12.2020. Instant bail application has been preferred by him on 28.06.2020, which is being considered in this judgment. All other co-accused are in custody. Their bail petitions stand rejected.

4. Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated with the alleged offence. Whereas learned Additional Advocate General vehemently opposed the bail on the ground that commercial quantity of psychotropic substance Tramadol was recovered from the vehicle occupied by petitioner. Record shows that it was a case of joint possession of all the four accused persons.

5(i). Heroin as well as Ridley capsules allegedly supplied by the petitioner were recovered from the vehicle

occupied by four co-accused persons. Heroin so recovered weighed 8.38 grams which falls under commonly known 'intermediate quantity' under the NDPS Act. According to the SFSL report, total weight of recovered capsules was 706.200 grams and total weight of the powder of recovered capsules was 600.600 grams. It would be apposite here to refer to the judgment passed by Hon'ble Apex Court in **Criminal Appeal No.722 of 2017**, titled as **Hira Singh Vs. Union of India**, decided on 22nd April, 2020, wherein it has been held that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be excluded, rather it is to be taken into consideration alongwith actual content by weight of the offending drug while determining the 'small quantity' or 'commercial quantity' of a narcotic drug or psychotropic substance. The relevant para from the judgment is reproduced thus:-

"10. In view of the above and for the reasons stated above, Reference is answered as under:-

- (I) The decision of this Court in the case of *E.Micheal Raj (supra)* taking the view that in the mixture of narcotic drugs and psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not required to be taken into consideration while determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law;

- (II) *In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration alongwith actual content by weight of the offending drug, while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances;*
- (III) *Section 21 of the NDPS Act is not stand-alone provision and must be construed alongwith other provisions in the statute including provisions in the NDPS act including Notification No. S.O.2942(E) dated 18.11.2009 and Notification S.O. 1055(E) dated 19.10.2001.*
- (IV) *Challenge to Notification dated 18.11.2009 adding "Note 4" to the Notification dated 19.10.2001, fails and it is observed and held that the same is not ultra vires to the Scheme and the relevant provisions of the NDPS Act. Consequently, writ petitions and Civil Appeal No. 5218/2017 challenging the aforesaid notification stand dismissed."*

In the instant case, total weight of powder of recovered capsule was 600.600 grams. This weight exceeds 250 grams notified as commercial quantity of Tramadol under the NDPS Act. Therefore, rigors of Section 37 of the NDPS Act get attracted. Section 37 reads as under:

"37. Offences to be cognizable and non-bailable.-

- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
 - (a) *every offence punishable under this Act shall be cognizable;*
 - (b) *no person accused of an offence punishable for [offences under section 19 of section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-*
 - (i) *the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
 - (ii) *where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*
- (2) *The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

In this regard, Hon'ble Apex Court in **AIR 2020 SC 721, State of Kerala Etc. Versus Rajesh Etc.**, held as under vide paras 19 to 21:-

"19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In *Union of India Vs. Ram Samujh and Ors.* 1999(9) SCC 429, it has been elaborated as under:-"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting deathblow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in *Durand Didier v. Chief Secy., Union Territory of Goa* [(1990) 1 SCC 95] as under:

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

- (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
- (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid

mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

20. *The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.*
21. *The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act s indeed uncalled for.”*

In order to make out a case for release on bail, petitioner has to satisfy the following twin conditions imposed in the aforesaid section:-

- (i) Court should be satisfied that there are reasonable grounds for believing that the petitioner is not guilty of such offence; and
- (ii) Petitioner is not likely to commit any offence while on bail.

5(ii). It has already been noticed that though the quantity of the Heroin recovered from the vehicle in question fell under commonly known as 'intermediate quantity'. However, total weight of powder of 1102 number of Ridley capsules containing psychotropic substance Tramadol hydrochloride was 600.600 grams. The weight of powder of the capsules allegedly recovered from the vehicle exceeded 250 grams notified as commercial quantity of psychotropic substance Tramadol under the NDPS Act. Possession consists of two elements, corpus or the physical control and the second animus or intent (**Refer (2015) 6 SCC 222**, titled **Mohan Lal vs. State of Rajasthan**). I have perused the record. At this juncture it cannot be said that petitioner was not in joint possession of the recovered contraband. Heroin was allegedly recovered from the middle of the front seat whereas Ridley capsules were recovered underneath the seat adjoining to the driver seat of the vehicle. During investigation, all the accused persons have statedly admitted about consuming the contraband and purchasing it from Surinder Pal. As per record, though the co-accused Samridhi Bedi had obtained the recovered contraband from Surinder Pal, but from the perusal of record, at this stage, it cannot be said that the contraband

was meant to be used only by her or that the other accused persons were not in joint possession of the contraband. The petitioner, therefore, has failed to meet the requirements of Section 37 of the NDPS Act. It cannot be said at this juncture that there are no reasonable grounds to believe that petitioner is not guilty of the offence alleged against her. Therefore, there is no merit in the bail petition, which is dismissed at this stage reserving liberty to the petitioner to file fresh petition at an appropriate stage in accordance with law, if so advised.

It is clarified that observations made above are confined only to the adjudication of petition and shall have no effect on the merits of the matter. Learned trial Court shall decide the matter without being influenced by above observations.

Jyotsna Rewal Dua
Judge

July 08, 2021
Mukesh