IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP(M) No. 2940 of 2024
Reserved on: 27.12.2024
Decided on : 31.12.2024

Vikas Verma

...Applicant

Versus

State of H.P.

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting?

For the Applicant : **Mr. Jeevesh Sharma, Advocate.**

For the respondent : **Mr. H.S. Rawat and Mr. Tejasvi Sharma, Additional Advocates General.**

Virender Singh, Judge (oral)

Applicant Vikas Verma has filed the present application, under Section 483 of Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'the BNSS') for releasing him, on bail, during the pendency of the trial, in case FIR No. 124 of 2024, dated 12.11.2024,

under Section 21 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the ND & PS Act), registered with Police Station, Theog, District Shimla, H.P.

2. The applicant has pleaded the fact that he is innocent person and has falsely been implicated in the present case, as he has no concern whatsoever with the offence, for which, he has been arrested, by the police.

3. It is the further case of the applicant that he is having deep roots in the society, and in case, he is ordered to be released on bail, he is ready to abide by any conditions, to be imposed by this Court.

4. According to the applicant, the contraband, allegedly recovered from the possession of the applicant, does not fall within the definition of 'commercial quantity'. As such, rigors of Section 37 are not applicable in the present case.

5. Investigation in the present case is stated to be completed.

6. The applicant has tried his luck by moving bail application, bearing Cr. MP(M) No. 2852 of 2024, before this Court. However, the same was dismissed as withdrawn, on 13.12.2024.

7. Thereafter, the applicant has again tried his luck by moving bail application bearing No. 446 of 2024, before the Court of learned Special Judge, Rohru, Camp at Theog, District Shimla, H.P., however, the same has also been dismissed, on 20.12.2024.

8. On these submissions, a prayer has been made to allow the bail application.

9. When put to notice, the police has filed the status report, disclosing therein, that on 11.11.2024, ASI Rakesh Kumar, alongwith other Police officials, was present on patrolling duty and at about 9:30 p.m., when they were present at Himfed Petrol Pump, Deorighat, then, I.O, ASI Rakesh Kumar received a secret information regarding involvement of Vikas Verma (applicant) in the business of Narcotics.

9.1 As per the information, said Vikas Verma (applicant) was travelling in his car bearing No. HP-63A-9698 Baleno (Blue coloured), coming from Phagu side towards Nangal Devi-Dhamandari Devi link road. The I.O has also been apprised by way of secret information that in case, the said vehicle is intercepted, large quantity of chitta/heroin could be recovered.

9.2 The said information was found to be authentic and reliable and according to the I.O., due to closure of the Courts, it was not possible to obtain search warrant. As such, Section 42(2) of the NDPS is stated to have been complied with and report is stated to have been submitted to the SDPO, Theog.

9.3 Thereafter, picketing was done at about 10:50 p.m. Subsequently, as per the status report, vehicle bearing No. HP95-3900 was found to be coming from Nangal Devi side, which was stated to have been signalled to stop. In the said vehicle, two persons were found sitting. The driver of the said vehicle disclosed his

name as Sahil Rathore, S/o Pratap Singh and the other person disclosed his name as Ram Prakash, S/o Heera Singh. The said persons were associated in the investigation of the case, as independent witnesses.

9.4 At about 11:00 p.m. vehicle bearing No. HP 63A-9698, being driven by its driver, found coming on the spot. The I.O. signalled to stop the aforesaid vehicle. Consequently, the driver of the said vehicle parked the vehicle on the side of the road. On inquiry, the driver of the vehicle disclosed his name as Vikas Verma, S/o Suresh Verma (applicant). The I.O. is stated to have apprised him about the secret information, which he had received. Thereafter, the picketing team had given personal search to the aforesaid persons, in the presence of independent witnesses, but, nothing incriminating was found, from the possession of the picketing party. In this regard, documentation was also done.

9.4 Thereafter, in the presence of independent witnesses, the vehicle was searched. During search, underneath the footmat of the driver seat, a transparent polythene bag was found, which, on opening was found to be containing a ball shaped substance, which, on inquiry, was disclosed by the applicant to be chitta/heroin. Thereafter, the I.O. checked the same and on the basis of experience, the same was found to be chitta.

9.5 On weighment of the contraband, it was found to be 8 grams heroin. Other codal formalities were completed. After registration of the FIR, the applicant was arrested.

9.6 The contraband, so recovered, was sent to FSL, Junga, after complying with the provisions of Section 52-A of the NDPS Act and positive report has been received.

9.7 On the basis of above facts, a prayer has been made to dismiss the bail application on the following grounds:

> *i) If the applicant is released on bail, he may coerce the witnesses and may allure them to depose in his favour.*
>
> *ii) In case, the applicant is released on bail, he may again indulge in the same activities and as such, he may destroy the future of the young generation.*
>
> *Iii) In case, the applicant is released on bail, it will encourage him to indulge in such type of activities;*
>
> *iv) In case, the applicant is ordered to be released on bail, he may affect the investigation.*

9.8 Lastly, a prayer has been made to dismiss the bail application on the ground that in case, the applicant is released on bail, it will give a wrong signal to the society.

10. Contraband, allegedly recovered, in the present case, is of intermediate quantity. As such, rigors of Section 37 of the NDPS Act are not applicable to the facts of the present case.

11. Investigation, in the present case, is stated to be complete. Meaning thereby, custodial interrogation of the applicant is no longer required by the Police.

12. Chances of commencement and conclusion of trial, against the applicant, in near future, are not so bright. As such, no useful purpose would be served by keeping the applicant in judicial custody, that too, for indefinite period.

13. Except the present case, no other case is registered against the applicant, as nothing has been mentioned in the status report, nor it has been argued by the learned Addl. A.G. As such, presumption of innocence is still available to the applicant.

14. The bail application cannot be rejected, as a matter of punishment, as punishment can only be inflicted after full fledged trial.

15. So far as the apprehensions, which have been expressed in the status report, are concerned, reasonable conditions can be imposed. Merely, on the basis of those apprehensions, the relief, for which, the applicant is entitled for, cannot be rejected.

16. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

17. The applicant is ordered to be released on bail in case FIR No. 124 of 2024, dated 12.11.2024, under Section 21 of the NDPS Act, registered with Police Station, Theog, District Shimla, on his furnishing personal bond in the sum of Rs. 50,000/-, with one surety in the like amount, to the satisfaction of learned trial Court.

18. This order, however, shall be subject to the following conditions:-

> *a) He shall make herself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented*

by any reason to do so, seek exemption from appearance by filing the appropriate application;

b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer, and

d) He shall not leave the territory of India without the prior permission of the Court.

19. Any of the observations, made herein above, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined, only to the disposal of the present bail application.

20. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions is found violated by the applicant.

21. The Registry is directed to forward a soft copy of the bail order to the Superintendent of District Jail, Kaithu, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

22. In case, the applicant is not released within a

period of seven days from the date of grant of bail, the Superintendent of District Jail, Kaithu, is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent of District Jail, Kaithu, is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

December 31, 2024
kalpana

Digitally signed by RAJNI
Date: 2024.12.31 17:37:18 IST