IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 3030 of 2023

Reserved on: 15th December, 2023.

Date of decision: 29th December, 2023.

Vijay Soni ...Petitioner.

Versus

State of H.P. ...Respondent.

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. Dheeraj K. Vashisth, Advocate.

For the respondent : Mr. I.N. Mehta, Sr. Addl. Advocate General with J.S. Guleria and Mr. Rohit Sharma, Deputy Advocates General.

Satyen Vaidya, Judge:

By way of instant petition, the petitioner has prayed for grant of bail in case FIR No. 50 of 2023 dated 20.3.2023, under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, "the Act"), registered at Police Station, Dhalli, District Shimla, H.P.

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[1]***Whether reporters of Local Papers may be allowed to see the judgment?***

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2. The petitioner was arrested on 26.3.2023 and is in custody till date.

3. The police has completed the investigation and presented the report under Section 173 of the Code of Criminal Procedure. The petitioner along with his co-accused is facing trial before the learned Additional Sessions Judge-I, Shimla.

4. Total five persons namely Surender Kumar, Rohit, Karan Sharma, Vijay (petitioner) and Parvesh Saini have been arrayed as accused. It is alleged that petitioner has been running the illicit trade of drugs and the other co-accused in the case were working for him at different destinations.

5. As per prosecution case on intervening night of 19th and 20th March, 2023, the police received secret information that two persons were to supply drugs in Dhalli Bazar and were proceeding towards the destination on motorcycle. A *Naka* was laid by involving independent witness at place Lambhi-Dhar at Dhalli Bye-Pass Road. At about 9.25 p.m., a motorcycle bearing No. HR-24 AE-1022

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was spotted with two persons. The motorcycle was stopped. The rider was named Surender Kumar and the person on pillion was accused Rohit. 45.86 grams of *charas/heroin* was recovered from the toolkit of the motorcycle. After preliminary interrogation, the case was registered at Police Station, Dhalli. Both the persons i.e. Surender Kumar and Rohit were arrested. During further investigation accused Surender Kumar disclosed that the contraband was handed over to him by accused Karan Sharma at place near Jabli in District Solan. Accused Karan Sharma was arrested, who disclosed that the contraband was handed over to him by Parvesh Saini at Dhakoli in Punjab. Investigation team also arrived at the hypothesis that petitioner was the kingpin and other co-accused were working for him.

6. The petitioner and accused Parvesh Saini were allegedly arrested on 26.3.2023 from Pochanpur Delhi. During further investigation, police found evidence linking all the accused with each other through CDRs and bank transactions.

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7. The petitioner has prayed for grant of bail on the ground that he is innocent and has been falsely implicated. It is submitted on behalf of the petitioner that the investigation is already complete and the investigation agency has not been able to collect any legal evidence against the petitioner. It is further submitted that the petitioner is not involved in any other case and he is ready and willing to abide by all the terms conditions as may be imposed by this Court.

8. The prayer for bail has been opposed by learned Additional Advocate General on the ground that the petitioner is involved in a serious offence and his release on bail will not be in the interest of society.

9. I have heard learned counsel for the parties and have also gone through the record carefully.

10. The quantity involved in the case is intermediate and hence the rigors of Section 37 of the Act will not be applicable.

11. The involvement of the petitioner in the case is alleged under Section 29 of the Act. The contraband was

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not directly recovered from the petitioner. He has been arrayed as accused on the alleged disclosure made by another co-accused. His implication is further sought on the basis of certain CDRs and monetary transactions reflected from his bank account.

12. As per dictum of judgment passed by Hon'ble Supreme Court in ***Tofan Singh vs. State of Tamilnadu***, reported in (2021) 4 SCC 1, the disclosure made by a co-accused cannot be read against the petitioner.

13. As regards, the existence of call detail record of accused persons, reference can be made to the judgment passed by the Hon'ble Supreme Court in ***State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta and another, (2022) 2 Scale 14,*** wherein such evidence has not been held to be a circumstance sufficient to hold prima facie case against co-accused.

14. The allegations that there have been financial transactions inter se the accused persons is still required to proved, more particularly in the context of the allegations of such transactions being tainted in nature.

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15. The investigating team has not been able to attribute any criminal history to the petitioner. The investigation is already complete and the challan stands filed. There is no real apprehension of the respondent-State with respect to the petitioner affecting the course of trial, in case released on bail.

16. The petitioner has already been in custody for more than eight months. Pre-trial incarceration cannot be ordered as a matter of rule. No grounds for pre-trial incarceration of the petitioner have been made out.

17. Petitioner is permanent resident of 654, Gali No.1, Shanti Nagar, Near Lalbati Chowk, Tehsil and District Sirsa, Haryana and there is no likelihood of his absconding or fleeing from the course of justice.

18. Another co-accused namely Parvesh Saini in identical fact situation has already been released on bail by this Court vide order dated 6th October, 2023, passed in Cr.MP(M) No. 2355 of 2023.

19. Keeping in view the peculiar facts and circumstances of the case, petition is allowed and the

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petitioner is ordered to be released on bail in case FIR No. 50 of 2023 dated 20.3.2023, registered under Sections 21, 25 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985, on his furnishing personal bond in the sum of Rs. 1,00,000/- with two sureties in the like amount each to the satisfaction of the learned trial Court. This order shall be subject to following conditions: -

i) That the petitioner shall appear before learned trial Court on each and every date and shall not delay the trial.

ii) That the petitioner shall not directly or in-directly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

iii) That breach of any of the bail condition by the petitioner shall entail cancellation of the bail.

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iv) That the petitioner shall not leave India without prior permission of the Court.

20. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

29th December, 2023 **(Satyen Vaidya)**
(jai) **Judge**

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