

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No. 3135 of 2023

Reserved on: 29.12.2023

Date of Decision: 11.01.2024.

Narender Singh

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ No.

For the petitioner : Mr. Abhishek Kaushik, Advocate.

For the Respondent : Mr. Jitender Sharma, Additional Advocate General, with HC Manoj Kumar, No. 110, I.O., Police Station Sadar, District Solan, H.P.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking regular bail. It has been asserted that FIR No. 240 of 2023, dated 18.11.2023 was registered against the petitioner at Police Station, Sadar, District Solan, H.P. for the commission of offences punishable under Sections 21 and 29 of the Narcotic

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act'). The petitioner is innocent and he was falsely implicated. The petitioner is a resident of Ward No. 8, Solan, Tehsil and District Solan, H.P. He shall appear in the Trial Court as and when directed to do so. He shall not make any inducement, threat or promise to any person acquainted with the facts of the case. He will abide by all the terms and conditions, which may be imposed by the Court. Therefore, it was prayed that the petition be allowed and the petitioner be released on bail.

2. The petition was opposed by filing a status report. It was asserted that the Police party was on patrolling duty on 18.11.2023 when a secret information was received that Vijay Kumar and Rahul were staying on the 3rd floor of Sona Guest House in Room No. 104 and were involved in the sale/purchase of heroin. In case of a search of their room, a huge quantity of heroin could be recovered from the room. The information was reduced into writing and was sent to the Supervisory Officer. The police went to the room along with the Manager. Rahul and Vijay were found in the room. The police searched the room and recovered 7.34 grams of heroin from the room. The police seized the heroin and arrested the occupants of the room. Vijay Kumar

disclosed on inquiry that he had purchased the heroin from someone in Punjab. He paid ₹ 10,000/- with his friend Narinder's (petitioner) mobile to Shubhankar Thakur. The petitioner had asked Vijay to make the payment because he was busy and could not go to Punjab to purchase the heroin. Petitioner and Rahul used to supply heroin in Solan. A mobile phone was found in possession of Vijay Kumar which was checked and it was found that ₹10,000/- was paid to Shubhankar Thakur through the account of Ranjana, wife of the petitioner. The police searched for the petitioner and arrested him. The mobile phone was found to be registered in the name of Ishu Kumar who said that the mobile number was being used by his friend Shubhankar Thakur. The police interrogated Shubhankar and found that he was present at Pathankot for a considerable time. Police arrested Mohit Lakhanpal and found that he was using the SIM. The payment was made to the Paytm account on the phone of Mohit Lakhanpal. The result from FSL was received, which confirmed the substance to be a sample of Diacetylmorphine (Heroin). The petitioner is in Judicial custody till 4.1.2024. The challan has been prepared and presented before the Court.

3. I have heard Mr. Abhishek Kaushik, learned counsel for the petitioner, and Mr. Jitender Sharma, learned Additional Advocate General for the respondent/State.

4. Mr. Abhishek Kaushik learned counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. There is no material to connect him with the commission of crime except the statement made by the co-accused, which is not admissible. As per the prosecution case, money was transferred to the account of Shubhankar Thakur. However, he was not arrested and he was found to be present at Pathankot for a considerable period, which falsifies the prosecution's version regarding the involvement of the petitioner. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Jitender Sharma, learned Additional Advocate General submitted that the petitioner is involved in the commission of a heinous offence. The consumption of heroin is adversely affecting the younger generation and the petitioner should not be released on bail. Hence, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions at the bar and have gone through the record carefully.

7. The Hon'ble Supreme Court had discussed the parameters for granting the bail in *Bhagwan Singh v. Dilip Kumar*, 2023 SCC OnLine SC 1059 as under:-

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the

prosecution, in the normal course of events, the accused is entitled to have an order of bail.

13. We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528* where the parameters to be taken into consideration for the grant of bail by the Courts have been explained in the following words:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688]* and *Puran v. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].*)”

8. A similar view was taken in *State of Haryana vs Dharamraj 2023 SCC Online 1085*, wherein it was observed:

7.A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.'

9. The police have relied upon the statement made by the co-accused Vijay Kumar that he had used the petitioner's

mobile phone, to connect the petitioner with the commission of the crime. It was laid down by the Hon'ble Supreme Court in *Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588 that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. Further, the confession made by the co-accused will be inadmissible because of Section 25 of the Indian Evidence Act. It was observed at page 568:-

44. Such a person viz. person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned and the statement is taken by the police officer. A confession, which is made to a police officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible. A confession unless it fulfils the test laid down in *Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47]* and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC.”

10. Similarly, it was held in *Surinder Kumar Khanna Versus Intelligence Officer Directorate of Revenue Intelligence 2018*

(8) SCC 271 that a confession made by a co-accused cannot be taken as a substantive piece of evidence against another co-accused and can only be utilized to lend assurance to the other evidence. The Hon'ble Supreme Court subsequently held in *Tofan Singh Versus State of Tamil Nadu 2021 (4) SCC 1* that a confession made to the police officer during the investigation is hit by Section 25 of the Indian Evidence Act and will not be saved by the provisions of Section 67 of NDPS Act. It was laid down in *Union of India v. Khalil Uddin, 2022 SCC OnLine SC 2109* that the benefit of *Tofan Singh (supra)* can be taken during the bail proceedings. It was observed:

8. The answer to the said question could be the statement recorded of Md. Nizam Uddin. The statement of Md. Jakir Hussain recorded under Section 67 of the Act has also named his owner accused Abdul Hai. We are conscious of the fact that the validity and scope of such statements under Section 67 has been pronounced upon by this Court in *Tofan Singh v. State of Tamil Nadu(2021) 4 SCC 1*. In *State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta 2022 (12) SCC 633*, the rigour of law laid down by this Court in *Tofan Singh* was held to be applicable even at the stage of grant of bail.

11. Therefore, no advantage can be derived by the prosecution from the confessional statement made by the co-accused implicating the petitioner. This is not a legally

admissible piece of evidence and cannot be used against the petitioner.

12. A similar situation arose before this Court in *Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri.L.J.4564* and it was held that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.

13. It was laid down by this Court in *Saina Devi vs. State of Himachal Pradesh 2022 LawSuit(HP) 211*, that where the police have no material except the call details record and the disclosure statement of the co-accused, the petitioner cannot be kept in custody. It was observed:-

“[16] In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration, the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of coaccused Dabe Ram, this Court had considered the existence of a prime facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.

[17] Since, the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused person(s), in *Pallulabid Ahmad's case* (supra), this Court is of the view that petitioner has made out a case for

maintainability of his successive bail application as also for grant of bail in his favour.

[18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in *Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1*. Further, on the basis of aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

14. A similar view was taken by this Court in *Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided on 06.10.2023* and *Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023,*

15. The police asserted that the money was transferred in the name of Shubhankar Thakur for the purchase of the heroin; however, the police found during the investigation that Shubhankar Thakur had been present at Pathankot for a long time. Hence, the version that the money was paid to Shubhankar Thakur who had supplied the heroin to Vijay was not corroborated by the investigation.

16. The police found the involvement of Mohit Lakhanpal and concluded that he was using the SIM allegedly handed over to Shubhankar Thakur and he was also using his

Paytm Wallet. Significantly, the police have not obtained the KYC details of the account to which the amount was transferred. Thus, at this stage, there is insufficient evidence to conclude that the money was transferred to the account of the supplier of the heroin.

17. The police asserted that the petitioner and Rahul are supplying heroin to various people at Solan, however, the police have not collected any evidence in support of the same. Therefore, the version of the prosecution that the petitioner and Rahul are suppliers of the heroin cannot be accepted at this stage.

18. Therefore, there is insufficient material to connect the petitioner with the commission of crime. The police had recovered 7.34 grams of heroin which is slightly more than the small quantity. The petitioner asserted that he does not have any criminal antecedents. This was not stated to be incorrect. Therefore, the petitioner being a first offender deserves a chance to reform himself and any continued detention of the petitioner in custody will make the chance of reformation bleak as the petitioner will come in contact with the hardened criminal.

19. Keeping in view these considerations, the petitioner is ordered to be released on bail in the sum of ₹50,000/- with two sureties to the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and conditions:-

- (i) The petitioner will join the investigation as and when directed to do so by means of a written *hukamnama*.
- (ii) The petitioner will not intimidate the witnesses nor will he influence any evidence in any manner whatsoever.
- (iii) The petitioner shall attend the trial in case a charge sheet is presented against him and will not seek unnecessary adjournments.
- (iv) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of intending visit to the SHO, the Police Station concerned and the Trial Court.
- (v) The petitioner will furnish his mobile number, and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

20. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

21. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

11th January, 2024
(Chander)