



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 11th DAY OF NOVEMBER, 2022

BEFORE

HON'BLE MR. JUSTICE VIRENDER SINGH

CRIMINAL MISC. PETITION (MAIN) No. 2395 of 2022

Between:-

RAMJAAN SON OF
REHMATULLA, RESIDENT OF
VILLAGE DAKHWARD, P.O.
CHARODI, TEHSIL CHURAH,
DISTRICT CHAMBA, H.P.

...APPLICANT

(BY MR. SURENDER KUMAR, ADVOCATE
AND

STATE OF HIMACHAL
PRADESH

...RESPONDENT

(MR. J.S. GULERIA, DEPUTY ADVOCATE GENERAL).

*This petition coming on for admission this day, this Court
passed the following:*

ORDER

The bail applicant Ramjaan, has filed the present bail application, under Section 439 of the Code of Criminal Procedure, for releasing him, on bail, during the pendency of the trial, in case FIR No. 192 of 2020, dated 9.12.2020, under Sections 20, 25 & 29

of the Narcotic Drugs and Psychotropic Substance Act (hereinafter referred to as the NDPS Act), registered with Police Station, Chowari, District Chamba, H.P.

2. The bail applicant has pleaded the fact that he is innocent person and has falsely been implicated in the present case, as he has nothing to do with the contraband, which is allegedly, shown to be recovered, from his exclusive and conscious possession.

3. According to the applicant, investigation, in the present case, is complete and the Police has submitted the Challan before the trial Court.

4. Apart from this, the bail applicant, through his counsel Mr. Surender Kumar, Advocate, has given certain undertakings, for which, he is ready to abide by, in case, he is released on bail.

5. As per the averments of the bail application, the applicant has also tried his luck by moving bail application No. 88 of 2021, before learned Special Judge-II, Chamba, which was dismissed on 5.4.2021. On these submissions, a prayer has been made to allow the bail petition.

6. In support of his contention, learned counsel for the bail-applicant has relied upon a decision rendered by a Coordinate Bench of this Court in Cr. MP(M) No. 2273 of 2022, titled as,

“Madan Lal versus State of Himachal Pradesh.”

7. When put to notice, the police has filed the status report disclosing therein that on 9.12.2020, H.C. Rajpal and the complainant alongwith other police officials was present at Tunuhatti, Forest Barrier. At about 4:30 a.m., they were checking the vehicles passing through the said forest barrier. In the meanwhile, a Pick-Up vehicle came there from Nainikhad side, which was signaled to stop. The driver of the vehicle stopped the vehicle. The registration number of the vehicle was found to be HP-73-9446. Only the driver of the vehicle was there in the vehicle. When the Investigating Officer, H.C. Rajpal has expressed his intention to check the said vehicle, the driver opposed such direction, upon which, a suspicion has been developed in the mind of Investigating Officer that he might have concealed something objectionable in his vehicle. As such, one Sanjay Kumar was associated in the investigation. Thereafter, name of the driver was inquired. He disclosed his name as Ramjaan.

8. When search of the vehicle was conducted, from the dash board, a blue colored polythene bag was found. When the said polythene was opened, the same was found containing stick shaped black substance. The said substance, on the basis of smelling and experience was found to be charas. On weighing, the

said charas was found to be 1 kg 184 grams.

9. Other codal formalities were completed and the contraband so recovered was taken into possession. The accused was arrested and produced before the Court.

10. The contraband, so recovered was sent to forensic lab for chemical analysis, on which, the positive report has been received from SFSL, Junga.

11. After completion of the investigation, the police filed a report under Section 173 of Cr. P.C. in the Court. The charges have already been framed against the accused. The case is stated to be fixed for evidence of the prosecution on 14.11.2022.

12. Lastly, it has been apprehended that in case, the bail-applicant is released on bail, he may again indulge in the business of selling charas. Hence, a prayer has been made to dismiss the bail application.

13. Arguments heard and file perused.

14. The accused, in the present case, has been arrested under the provisions of N.D.P.S. Act. The legislature, in its wisdom, has enacted this statute to curb the menace of drug abuse with stringent punishment. Certain conditions are there in the NDPS Act in the shape of Section 37 of NDPS Act, which are in addition to the conditions as contained in Section 439 Cr. P.C. Before

releasing a person on bail, conditions, as enumerated under Section 37 of the NDPS Act, are to be fulfilled, if the accused has been arrested for the offence, involving commercial quantity of contraband.

15. So far as the case law relied upon by the learned counsel for the bail applicant, is concerned, the same, no ways help the case of the bail applicant, as the facts of the said case are entirely different from the present one.

16. In a case of commercial quantity, rigors of Section 37(2) come into play. It is no longer res-integra that both the conditions as enumerated in Section 37 of the NDPS must co-exist before releasing the bail applicant, on bail, during the pendency of the trial.

17. Hon'ble Apex Court, in a recent decision, has elaborately discussed the provisions of Section 37 of the NDPS in a case reported in **2022(10) SCALE**, titled **Narcotics Control Bureau vs. Mohit Aggarwal**, wherein, it was held as under:-

“10. The provisions of [Section 37](#) of the NDPS Act read as follows:

“[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 or 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.]**

11. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed

an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed in sub-section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In "Collector of Customs, New Delhi v. Ahmadaliev Nodira"⁵, a decision rendered by a Three Judges Bench of this Court, it has been held thus:-

"7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged

offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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."

13. The expression "reasonable ground" came up for discussion in "State of Kerala and others Vs. Rajesh and others" 6 and this Court has observed as below:

"20. 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](#) that 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 is indeed uncalled for.”

18. This Court finds nothing on record, from which, it can even be inferred, at this stage, that any condition, as enumerated, in Section 37 of the NDPS Act, exist, in favour of bail applicant.

19. While deciding the question of bail, it is the duty of the Court to maintain a delicate balance between individual liberty and larger interest of the society. Releasing a person involved in such a crime, will give a wrong signal to the society that the person, after being arrested, in such a crime, is still moving freely in the society.

20. Considering all these facts, there is no ground to pass any order in favour of the bail applicant under Section 439 of the Cr.P.C. Consequently, the bail application of the bail applicant is dismissed.

21. Any 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.

**(Virender Singh)
Judge**

November 11, 2022
(Kalpana)