

**In the Court of Rajeev Bhardwaj, Special Judge, Shimla,
H.P.**

CIS CNR No. HPSH100020712021
CIS Case Type Bail application
CIS Registration No. 138/2021
Bail Application No. 73-S/22 of 2021
Date of Institution: 28.04.2021
Date of Decision: 17.05.2021

Amandeep son of Sh. Sat Pal Devedi, resident of Village Brari Post Office, Pratap Nagar, Tehsil Nangal & District Roop Nagar, Punjab A/P Village & P.O. Brampur Tehsil Nangal, District Roop Nagar, (Through his father Sh. Satpal Devdi), aged about 26 years, (**Presently in judicial custody**).

...Bail applicant/accused.

Versus

State of Himachal Pradesh.

..... Respondent.

Bail application under Section 439 of the Cr.P.C. in FIR No. 79/2021, dated 15.04.2021 under Section 20 of ND & PS Act, registered with Police Station Boileauganj, District Shimla, H.P.

For the bail applicant: Sh. Ashwani Dhiman, Advocate.

For the respondent: Sh. B.S. Negi, Id. P.P.

ORDER:

This order will dispose of an application under Section 439 of Cr.P.C. filed by the bail-applicant/accused for the grant of bail.

2. Brief facts, necessary to dispose of the bail application, are that on 15.04.2021 a police party comprising ASI Ambi Lal, H.C. Lalit Kumar No. 42, HHC Sunil Kumar No. 1026, Constable Bhuvnesh Kumar No. 1527, Constable Rahul Verma No. 1500 and Constable Dheeraj Kumar No. 669 went on patrolling and stopping the crime towards Sankatmochan, Taradevi, Shoghi etc. and when the said party was present at Sonubangla at about 7-00 P.M., HRTC bus bearing registration No. HP-30-5292 came from Shimla side and it was stopped for checking. The police party while checking the bus, reached at seat No.37, the bail applicant was found carrying rucksack bag in his lap. The police inquired from him about the reasons to travel and when he could not give satisfactory answer, it was apprehended that he was carrying some suspicious articles. Thereupon, Promod Kumar, conductor of the bus and Ram Pal a passenger sitting on seat No.26 was associated in the search. When the rucksack bag was opened in presence of the witnesses, one Micron bag was found and on opening the said bag, some black coloured substance was found. On the basis of experience and smelling, it was charas, which on weighment was found 814 grams. After completing the codal formalities, the FIR has been registered against the bail-applicant.

3. The present application has been moved by the bail-applicant under Section 439 Cr. P. C. for the grant of bail on the grounds that he has been falsely implicated in this case and he has no concern with the bag. No purpose is going to be served by keeping him in custody. The rigors of Section 37 of

the ND&PS Act are not applicable in the present case. He has also given undertaking that he shall abide by all the terms and conditions as imposed by the Court, if released on bail.

4. The police have opposed the prayer of the bail-applicant/accused on the grounds that if the bail applicant is released on bail, he may again indulge in the trade of psychotropic and spoil the young generation.

5. Arguments heard. I have also gone through the case file.

6. It is settled law that bail is not only a matter of right, but only a privilege to be granted at the discretion of the Court. The discretion is to be exercised objectively and not subjectively with a view to strike a balance between individual's right of personal freedom and the investigational rights of the police.

7. The quantity allegedly recovered from the possession of the bail-applicant is 814 grams of charas, which is more than small quantity and less than commercial quantity. Thus, bar of Section 37 of the ND & PS Act is not attracted. Reference can also be made to the decisions of our Hon'ble High Court in ***Surjan vs. State of H.P. Latest HLJ 2002 (H.P.) 934 and Ved Ram v. State of Himachal Pradesh 2007(1) Shim. L.C. 152, Raj Kamal V. State of Himachal Pradesh, Cr. MP(M) No. 1371 of 2018, Decided on 24.10.2018, Pawan Dixit Vs. State of Himachal Pradesh Cr.MP (M) No. 1570 of 2017, Decided on January 2, 2018 and Pawan Kumar Vs. State of H.P. Cr. MP (M) No.1776 of 2018 Decided on 28.12.2018.***

8. The bail-applicant is young person and putting him in the jail with other criminals will only make him hardened criminal instead of reforming and bringing him in the main stream. When the crime is of serious nature and there is possibility of the accused tampering with the evidence or fleeing from justice, there is justification for sending the bail-applicant/accused in judicial custody. However, in the present case, there is no such apprehension and putting the bail-applicant behind the bar will mar his career and it also amounts to predetermination of the guilt without trial. The grounds taken by the police to deny the bail are not substantiated by record.

9. Thus, no case is made out to deny bail to the bail-applicant. After taking into consideration all the facts of the case, nature and gravity of the offence and the ratio of above decisions of Hon'ble High Court, I think that the applicant/accused deserves to be released on bail subject to furnishing personal bond in the sum of ₹ 2,00,000/- (rupees two lacs) each with two sureties of the like amount to the satisfaction of the learned Addl. Chief Judicial Magistrate Ist Class Court No.2, Shimla/ Illaqua Magistrate. However, release of the bail applicant is subject to the following conditions:-

- i) That the bail applicant shall make himself available for interrogation as and when called by the investigating officer in this case.
- ii) That the bail applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts

of case so as to dissuade him/her from disclosing such facts to Court or to any police officer.

- iii) That the bail applicant shall not leave the country without the prior permission of the investigating officer or the Court.
- iv) The bail applicant shall attend the trial on each date, unless exempted.
- v) In case of non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the bail applicant undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of Cr.P.C. The failure of the petitioner to reimburse the State shall entitle the trial Court to order transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be only to trace the bail applicants and relates to the exercise undertaken solely to nab the bail applicant in that FIR, and during that voyage, the Police had not gone for any other purpose/function

what so ever.

- vi) In case the bail applicants commit any fresh offence during the bail, then they shall intimate the SHO of the present police station, with all the details of the present and the new FIR, within thirty days of the knowledge of such fresh FIR. In such a situation, it shall be open for the State, if it deems fit and proper, to apply for cancellation of this bail.
- vii) The bail applicant shall surrender all firearms along with ammunition, if any, and the arms license to the concerned authority within 30 days from today.
- viii) The bail applicants shall inform the SHO about the place of residence during trial. The bail applicants shall intimate about the change of residential address, within two weeks from such change, to the police station, and after filing of the Police report also to the trial Court.
- ix) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the bail applicant.

10. The police is at liberty to move this Court for cancellation of this order, in case, any of the above condition is

found violated.

11. The observations so made, herein above, are confined to the disposal of the present bail applications and same shall have no bearing on the merits of the case.

Announced and signed in the open Court today this 17th day of May, 2021. Sd/-

(Rajeev Bhardwaj)
Special Judge, Shimla, H.P.

PS*

Special Judge Shimla