

**In the Court of Nitin Kumar, Special Judge-III, Kangra
Dharamshala, District Kangra, HP Camp at Jawali.**

Bail Application No. : 49/D/XXII/2022

Registration No. : 612 of 2022.

Date of presentation : 13.10.2022

Date of Institution : 15.10.2022

Date of Decision : 21.10.2022.

Sh. Yashpal, age 26 years S/O Sh. Purshottam Giri,
resident Babe-Da-Mohalla Pathankot, Police Station
Sadar Pathankot, Tehsil and District Pathankot (Punjab).

.....Applicant.

-Versus-

The State of Himachal Pradesh.Respondent.

Bail application under Section 439 Cr.P.C.

For the bail petitioner : Shri Akash Sharma, Id. Advocate.

For the State : Shri Vivek Dogra, Id. PP.

ORDER

This order shall dispose of the present bail application filed under Section 439 of Cr.P.C. in case FIR No. 136 of 2022 dated 02.10.2022 under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND&PS Act for short), registered in Police Station, Nagrota Bagwan, District Kangra, HP. It is averred by the bail applicant that he is innocent, committed no offence whatsoever and has falsely been implicated in this case. It is averred that bail-applicant undertakes to abide by all the conditions to be imposed by the Court.

2. Reply filed by the prosecution. Tersely the facts of the case are that on 02.10.2022, ASI Sushil Kumar I/O Police Station Nagrota Bagwan, along with HC Dinesh Kumar No. 17, HHC Multan Singh No. 1008 in official Vehicle, driven by LHC Khushal Singh No. 640 were on their way to the police station, while patrolling with the associates and reached at Mala Chowk at around 8:30 pm, a person was noticed having backpack on his back, in front of the sweet shop on the road from Mala Chowk to Pathiyar. As soon as the ASI Sushil Kumar asked the constable driver to stop the car, the constable driver Khushal Singh stopped the car, then such person, the bail applicant, panicked on noticing the police and started running towards the path after throwing the back pack in the drain built in front of the shop. Applicant was apprehended at some distance with the help of support staff. On interrogation, the bail applicant revealed his name as Yashpal and when questioned about the back pack thrown, he started to hesitate, but when strenuously questioned thoroughly, he disclosed that there is charas in the back pack, on which the back pack was checked in the presence of Rajendra Kumar and Ashok Kumar, brought to the spot by police telephonically. Charas/ Cannabis weighing 111.58 grams was recovered. Form NCB-I Triplicate furnished on the spot. Memo was prepared on the spot. The bail applicant Yashpal was

arrested on 03.10.2022 at 2.25 AM. Hence, the present bail application.

3. The Id. counsel for the bail-applicant submitted that he is innocent and has committed no offence. The Id. counsel submitted that the investigation in the case is complete and the bail-applicant is no more required by the police for further investigation. The learned counsel for the bail applicant has submitted that the applicant will cooperate in the further investigation and there is no likelihood of his absconding and further undertake to abide by all the conditions whatsoever imposed by the Court in case of his bail.

4. Refuting the submissions of the learned counsel, also by filing the reply, the Ld. Public Prosecutor has submitted that the bail applicant is involved in the possession of narcotic substances. It is submitted that the bail-applicant may prejudice the investigation, hence, prayed for dismissal of the bail application.

5. I have heard the Id. counsel for the bail applicant and the Id. PP. for the State and also gone through the relevant record. In view of the above factual situation, it is apparently clear that the applicant is seeking bail under more liberal provisions of Section 439, Cr.P.C, whereas the State is seeking to restrict the right of bail of the applicant on the basis of strict and rigorous conditions prescribed under Section 37 of the ND&PS Act.

6. The recovered contraband is of intermediate quantity as prescribed in the Table under sub clause (viiia) and (xxiiia) of section 2 of the ND & PS Act. Therefore, there appears to be no reasonable ground for declining bail to the petitioner. Reliance is placed on case law in **Subhash Chand Vs State Of Himachal Pradesh, Latest HLJ 2020 (HP)(1) 72** by the Hon'ble High Court of HP.

7. It is well settled that personal liberty as guaranteed under Article 21 read with Article 22 of the Constitution of India is sacrosanct and is at the highest pedestal of the freedoms guaranteed under the Constitution of India. The liberty of an accused can be curtailed if it appears to the court that in case of bail being granted, the accused may act detriment to the same or in prejudice to the case. At the time of considering the bail application, the court has also to keep in mind the fact that applicant is not in a position to influence the witnesses or tamper with evidence. The general rule is "Bail not Jail".

8. Testing the instant application from the above perspective, it requires to be recapitulated that the rigors of section 37 of the ND&PS Act do not apply to the instant case. Therefore, there appears to be no reasonable ground for declining bail to the applicant. The law settled by the **Honorable Supreme Court in Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC-40** and the principles settled in **Prasanta Kumar Sarkar v**

Ashish Chatterjee and Another (2010) 14 SCC 496, came to the guidance, whilst deciding the present application.

9. It is an admitted fact that the applicant is in judicial lockup, which means that the custody of the applicant is not required for custodial interrogation and no recovery is to be effected from him. The valuable right to liberty cannot be neutralized, if the petitioner generate confidence that he would move to the Court for his trial by tendering sufficient sureties. As per police report, the address of bail applicant stand verified, as such, there is no impediment in releasing them on bail on sufficient sureties.

10. The bail application is also opposed by the learned Public Prosecutor for the State on the ground that in case the applicant is released on bail, then he is likely to tamper with the prosecution evidence and to prejudice the investigation further. However, there is nothing on record to infer that the applicant is the influential person, so as to use influence over the prosecution witnesses. In view of this, such apprehension of the prosecution appears to be misconceived and as such, the aforesaid apprehension of the prosecution can be suitably meted with by imposing conditions, while releasing the applicant on bail not to tamper with the prosecution evidence and to be present during the investigation/trial. Needless to say that in case the applicant indulge in any such activities,

then the prosecution is at liberty to seek cancellation of the bail granted to the applicant.

11. Thus, in view of my aforesaid discussions, I am of the considered opinion that no useful purpose is likely to be served by detaining the applicant in judicial lockup. Hence, the bail application moved by the applicant are allowed and the applicant is ordered to be released on bail on his furnishing personal bonds in the sum of ₹ 50,000/- with one solvent surety in the like amount to the satisfaction of the learned Additional Chief Judicial Magistrate, Kangra, HP, in absence thereof by any of the Judicial Magistrate on duty in district Kangra, HP. The bail is granted subject to the following conditions:-

- i) The applicant shall make himself available for the purpose of interrogation, if so required and regularly attend the Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
- ii) the applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- iii) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court; and

- iv) the applicant shall not leave the territory of India without the previous permission of the Court.
- v) the applicant shall submit his contact numbers, WhatsApp number, E-mail IDs, if any.

12. The bail application stands disposed off. It is made clear that the observations made herein above, shall be construed only for the disposal of the present bail application and it shall have no effect on the merits of the case. Copy of order be provided to the Ld. counsel for petitioner and be uploaded on the official e-mail of the concerned jail, where petitioner is lodged presently. File after due completion be consigned to the record room.

Announced and signed in the Open Court on this 21st day of October, 2022.

(Nitin Kumar),
Special Judge-III,
Kangra at Dharamshala,
Camp at Jawali,
District Kangra, H.P.