

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

i) Bail Application No.: 30-J/XXII/22
Registration No. : BA/604/22
CNR No. HPKA-0100-5569-2022
Date of presentation : 01.10.2022
Date of Decision : 19.10.2022

Rajinder Kumar @ Kukku, Age 28 years, S/O Jeeti R/O
Village Harnota Pattan, Post Office Harnota, Tehsil Jawali,
District, Kangra, H.P.

.....Bail-petitioner.

-Versus-

The State of Himachal Pradesh.

.....Respondent.

ii) Bail Application No.: 32-J/XXII/22
Registration No. : BA/586/22
CNR No. HPKA-0100-5548-2022
Date of presentation : 01.10.2022
Date of Decision : 19.10.2022

Anjna, aged 43 W/O Ajay Kumar R/O V.P.O. Harnota,
Tehsil Jawali, District, Kangra, H.P..

.....Bail-petitioner.

-Versus-

The State of Himachal Pradesh.

.....Respondent.

Bail applications under Section 439 Cr.P.C.

For the bail petitioners : Sh.Pankaj Tyagi, Id Advocate.

For the State : Sh.Vivek Dogra, Id. Addl. PP.

ORDER

This order shall dispose of two bail applications filed under Section 439 of Cr.P.C. in case FIR No. 146 of 2022 dated 21.09.2022, under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the ND&PS Act for short), registered in Police Station, Jawali, District Kangra, HP. It is averred by the bail petitioners that they are innocent, committed no offence whatsoever and have falsely been implicated in this case. It is averred that bail-petitioners undertake 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 21.09.2022 HC Arjun Singh No. 89, Narcotic Cell Noorpur, alongwith Kulbhushan Singh No. 580, Sandeep Kumar No. 1273, L/C Sunita Devi No. 745, in Car bearing No. H.P. 54-A-0779, and with HC Vipran Kumar No 120, HASI Joginder Singh No. 465, HHC Ramesh Kumar No. 1200 in Car bearing Number HP-38F-6916, with driver HHC Sandeep Kumar No 1030 having I.O. Kit And Drug Dection kits, at 12:45 hrs, were at place Harnota near Bilga Mata temple. At the same time an information was received from informer that, Anjna and Rajinder Kumar @ Kukku, residing in their residential house located at Harnota Patan do illegal trade of selling heroin. If at the same time raids and searches be conducted in their residential house, then a large quantity of heroin/chitta can be recovered. The

information was reliable and an information under section 42(2) ND&PS ACT, was sent and police team left for the residential house of Anjana and Rajinder Kumar. Local persons Sukhwinder Singh was informed about the situation by phone and police urged him to bring another person as a witness, who after about 15 minutes came with person Manu Mukesh and met on the road leading to Harnota Patan village from Harnota Bholkhas road. Both of whom with their consent joined the raiding party as witnesses. After which police team arrived at the residential house of Anjana and Rajinder, where, outside, the house both bail petitioners were found present at the house. The police team was searched by applicant Rajinder Kumar and Anjana, searched M.H.C. Sunita Devi No. 745, but not found in any narcotic substance. After this, the search of the residential house was carried out and during the search, a polythene transparent wrapped packet was found placed in the middle of two speaker boxes, placed on the left side corner of the wall, in front of the double bed in the bedroom. On opening the knot of the wrapped packet and checking it, a white and light brown colored powdered and granular substance was found inside the wrapped packet. On the suspicion the recovered material was checked with drug detection kit and it was found to be 6.30 grams of heroin. Memo of recovery was prepared and other codal formalities were conducted on the spot. FIR under section 21 and 29 of the ND&PS Act, was registered, on receiving the rukka in

the police station. Arrest of applicants taken place. Hence the bail applications.

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

4. Refuting the submissions of the learned counsel, also by filing the reply, the Ld. Public Prosecutor has submitted that the bail petitioners are involved in the possession of narcotic substances. Argued that above applicants are very smart and clever and there is a lot of resentment amongst the local residents of the area and they be released on bail, then they can scare the witnesses and may trap the younger generation in drugs consumption. It is submitted that the bail-petitioners may prejudice the investigation and may again indulge in same activities, hence, prayed for dismissal of the bail applications.

5. I have heard the Id. counsel for the bail petitioners 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 petitioners are 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 petitioners 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 (viia) and (xxiia) of section 2 of the ND & PS Act. Therefore, there appears to be no reasonable ground for declining bail to the petitioners. 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 applications 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 petitioners. 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 applications.

9. It is an admitted fact that the petitioners are in judicial lockup, which means that the custody of the petitioners is not required for custodial interrogation and no recovery is to be effected from them. 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 addresses of bail petitioners are verified, as such, there is no impediment in releasing them on bail on sufficient sureties.

10. The bail applications are also opposed by the learned Public Prosecutor for the State on the ground that in case the petitioners are released on bail, then they are likely to tamper with the prosecution evidence. However, there is nothing on record to infer that the petitioners are the influential persons, 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 petitioners on bail not to tamper with the prosecution evidence and to be present during the investigation/trial. Needless to say that in case the petitioners indulge in any such activities, then the prosecution is at liberty to seek cancellation of the bail granted to the petitioners.

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 petitioners in judicial lockup. Hence, the bail applications moved by the petitioners are allowed and the petitioners are ordered to be released on bail on their furnishing personal bonds in the sum of ₹ 50,000/- each with one solvent surety each in the like amount to the satisfaction of the learned Judicial Magistrate First Class, Jawali, HP, in absence thereof by any of the Judicial Magistrate on duty. The bail is granted subject to the following conditions:-

- i) The petitioners shall make themselves 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 petitioners shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- iii) the petitioners 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 petitioners shall not leave the territory of India without the previous permission of the Court.
 - v) the petitioners shall submit their contact numbers, WhatsApp number, E-mail IDs, if any.

12. The bail applications stand disposed off. It is made clear that the observations made herein above, shall be construed only for the disposal of the present bail applications and it shall have no effect on the merits of the case. An authenticated copy of this order be placed on bail application bearing computer registration No.586 of 2022. A copy of bail application be supplied to the Ld. counsel for applicants without charging any fee and order be mailed on the official e-mail account of the concerned jails. File after due completion be consigned to the record room.

Announced and signed in the Open Court on this 19th day of October, 2022.

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