

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

Bail Application No. :45-D/XXII/2022.
Registration No. : 592 of 2022.
Date of presentation : 10.10.2022.
Date of Institution :14.10.2022.
Date of Decision :21.10.2022.

Ravi Kumar S/O late Sh.Duni Chand, R/O Village Tangroti,
Post Office Ramehar, Tehsil Dharamshala, District Kangra and
age 40 years.

Petitioner.

-Versus-

The State of Himachal Pradesh.Respondent.

Bail application under Section 439 Cr.P.C.

For the bail petitioners : Sh. Akash Sharma, Id. Advocate.

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

ORDER

This order shall dispose of the present bail application filed under Section 439 of Cr.P.C. in case FIR No. 149 of 2022 dated 27.09.2022 under Section 22 the Narcotic Drugs and Psychotropic Substances Act,1985 (hereinafter referred to as the ND&PS Act for short), registered in Police Station, Dharamshala, District Kangra, HP. It is averred by the bail petitioner that he is innocent, committed no offence whatsoever and has falsely been implicated in this case. It is

averred that bail-petitioner 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 27.09.2022, HC Vikas Kumar No. 122 I.O. Narcotis Cell Dharamsala, alongwith C.Sunil Kumar No. 587, C. Anil Guleria No. 412 and C. Ajit Kumar No. 461, in vehicle bearing number, HP-37C-5225 and also with HC Harish Sen No. 112 and H.C. Sachin No. 516, on Motorcycle bearing No. HP-37-D-2619, were present at about 100 meters from police post Yol towards Tangroti road, at about 02:25 PM, in connection with any clues about narcotics Drugs, having I.O. and Drug Detection Kit with them. Then an information was received from informer that Ravi Kumar alias Banku, is trying to sell intoxicant capsules in his vehicle bearing number HP-39D-8990, i-20 color white car. It was transpired that he is standing near Military Dairy, if he be nabbed instantly, then huge quantity of intoxicating capsules can be recovered. The information was reliable and in case of delay in obtaining search warrant or authorization letter, there was possibility of destruction of evidence, so, information under Section 42 (2) NDPS Act, was sent to Dharamshala. HC Vikas Kumar left for the Military Dairy (Military Farm) and at about 2:55 P.M., when he reached near the peepal tree (sacred fig), on the side of the Tangroti road, at about 50 meters ahead of the Tangroti Army Farm, the car bearing no. HP 39D-8990, i-20, white in color was noticed parked on the left side of the road. In whose

driver's seat, bail applicant was found sitting. A motorcycle leading from Tagroti to Yol side was stopped, which had two persons namely Anil Kumar and Rajesh Kumar, who were included as witnesses. After which the vehicle bearing No. HP-39D-8990, i-20, color white was searched in front of applicant Ravi Kumar and a red colored knotted carry bag was found inside the dash board of the vehicle. When the knot was opened and checked, blue capsules were found in it. Which were marked with name SPM-PRX+ WOCKHARDT. On counting, total 124 capsules were found. When weighed with electronic scale along with the carry bag, same were found to be weighing 86.4 grams. The Drug Insp. Shalu Sharma confirmed that the capsules were containing Tramadol, which is a banned salt. The recovered capsules were put in a piece of cloth along with the carry bag and closed the cloth parcel and was sealed with 7 seals of the seal "H". Forms NCB-1 triplicate were completed on spot. Memo for recovery was prepared on the spot. Rukka, was sent to the police station, through A. Ajit Kumar No. 461, for registration of FIR and case number 149/2022, dated 27.09.2022, under section 22 of the ND&PS Act was registered and petitioner was arrested. Hence, the present bail application.

3. The Id. counsel for the bail-petitioner 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-petitioner is no more required by the police for further

investigation. The learned counsel for the bail petitioner has submitted that the petitioner will cooperate in the further investigation and there is no likelihood of his abscondance 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 petitioner is involved in the possession of narcotic substance by portraying his involvement in the instant ND & PS case. It is submitted that the bail-petitioner may involve in akin offences and may threaten the prosecution witnesses in case of his release on bail. Further submitted that the bail petitioner might engulf the young generation in narcotic consumption by selling the same on enlargement on bail, hence, prayed for dismissal of the bail application.

5. I have heard the Id. counsel for the bail petitioner 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 petitioner 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 petitioner on the basis of strict and rigorous conditions prescribed under Section 37 of the ND&PS Act.

6. The recovered contraband in this case is higher than the small quantity and lesser than the commercial 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 perspectives, 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 petitioner. The law settled by the Hon'ble Supreme Court in **Sanjay Chandra v. Central Bureau of Investigation (2012) 1 SCC 40** and the principles settled in **Prasanta Kumar Sarkar v Ashis Chatterjee and Another (2010) 14 SCC 496**, came to the guidance, whilst deciding the present application.

9. It is an admitted fact that the petitioner is in judicial lockup, which means that the custody of the petitioner 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. The police report manifests that the bail petitioner is local resident of District Kangra and as such, there will be no impediment in releasing him 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 petitioner is released on bail, then he is likely to tamper with the prosecution evidence. However, there is nothing on record to infer that the petitioner is an 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 condition, while releasing the petitioner on bail not to tamper with the prosecution evidence and to be present during the investigation/ trial. Needless to say that in case the petitioner indulge in any such activities, then the prosecution is at liberty to seek cancellation of the bail granted to him.

11. Thus, in view my aforesaid discussions, I am of the considered opinion that no useful purpose is likely to be served by detaining the petitioner in judicial lockup. Hence, the

bail application moved by the petitioner is allowed and the petitioner is ordered to be released on bail on his furnishing personal bond in the sum of Rs 50,000/- with one solvent surety in the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kangra at Dharamshala, District Dharamshala, HP and in absence thereof by any other Judicial Magistrate on his duty in District Kangra, HP. The bail is granted subject to the following conditions:-

- i) The petitioner 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 petitioner shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- iii) the petitioner 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 petitioner shall not leave the territory of India without the previous permission of the Court.
- v) the petitioner shall submit his contact numbers, Whats App numbers, 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 this 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, HP.

Special Judge-III, Kangra at Dharamshala, Camp at Jawali.