

2022 SCC OnLine HP 6154

In the High Court of Himachal Pradesh at Shimla
(BEFORE VIVEK SINGH THAKUR, J.)

Rajan ... Petitioner;

Versus

State of Himachal Pradesh ... Respondent.

Criminal Misc. Petition (Main) No. 2289 of 2022

Decided on November 10, 2022

Advocates who appeared in this case:

Sh. Umesh Kanwar, Advocate

Sh. Hemant Vaid, Additional Advocate General

H.C. Ravinder Kumar NO.72, Police Station Damtal, District Kangra,
H.P., Is Present in Person

The Order of the Court was delivered by

VIVEK SINGH THAKUR, J.:— Petitioner has approached this Court, invoking provisions of Section 439 Code of Criminal Procedure (in short 'Cr.P.C. '), seeking bail in FIR No. 150 of 2020, dated 28.09.2020, registered in Police Station Damtal, District Kangra, H.P., under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act').

2. Status report stands filed. Record has also been made available.

3. In the status report, circumstances, in which petitioner was apprehended for having been in possession of 495 Capsules of Ridley containing Tramadol therein, have been narrated.

4. Petitioner alongwith co-accused was got free after binding them under Section 41(I)(a) of Cr. P.C. After receipt of report from State Forensic Science Laboratory (SFSL), they have been arrested on 04.04.2021. As per State Forensic Science Laboratory (SFSL) report, actual weight of the contraband is 274.725 grams.

5. After remaining in police custody they have been sent in judicial custody. At present petitioner and co-accused are in detention. As per status report, next date of hearing in the trial Court is 01.12.2022 for recording evidence of prosecution.

6. It has been submitted on behalf of the petitioner that petitioner has been found Hepatitis-B positive as well as HIV positive. Learned counsel for the petitioner has also placed on record prescription slip/treatment Chart of the petitioner. By referring pronouncement of the Supreme Court in Special Leave to Appeal (CrI.) No(s).2225 of 2022, dated 11.04.2022, titled as *Bhawani Singh v. State of Rajasthan*,

contended that petitioner is also entitled to be enlarged on bail.

7. Learned Additional Advocate General, as per instructions received, has submitted that claim of the petitioner about his positive report for Hepatitis-B as well as HIV positive is correct.

8. Considering unusual and exceptional case of disease for which petitioner is suffering, petitioner is directed to be enlarged on bail, subject to his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of the trial Court/Special Judge, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to assure presence of petitioner/accused at the time of trial: —

- (i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;
- (ii) that 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;
- (iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;
- (v) that the petitioner shall not misuse his liberty in any manner;
- (vi) that the petitioner shall not jump over the bail;
- (vii) that in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;
- (viii) that the petitioner shall not leave the territory of India without prior permission; and
- (ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

9. In view of provisions of Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, trial Court is also directed to take appropriate steps for disposal of the trial at the earliest as per convenience.

10. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the

interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

11. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

12. Trial Court is directed to comply with the directions issued by the High Court, vide communication No. HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

13. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

14. Petition is disposed of in aforesaid terms.

15. Copy dasti.

16. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the trial Court/Special Judge, and the said Court shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.

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