

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 5th DAY OF OCTOBER, 2021

BEFORE
HON'BLE MR. JUSTICE CHANDER BHUSAN BAROWALIA

CRIMINAL MISC. PETITION (MAIN) No. 1266 of 2021

Between:-

GIRIRAJ S/O SH. PREM BHADUR,
R/O VILLAGE TULSIPUR,
DISTRICT DANG, ANCHAL RAWTI
NEPAL, H.P. C/O KESHAV
THAKUR, VILLAGE SUNGRA, P.O.
MATIYANA, TEHSIL THEOG
DISTT. SHIMLA, H.P., AGED
ABOUT 24 YEARS.

.....PETITIONER

(BY MR. RAVINDER SINGH
CHANDEL.)

AND

STATE OF HIMACHAL PRADESH.

.....RESPONDENT

(BY MR. ARVIND SHARMA, P.K.
BHATTI AND MR. BHARAT
BHUSHAN, ADDITIONAL
ADVOCATES GENERAL, WITH
MR. MANOJ BAGGA, ASSISTANT
ADVOCATE GENERAL.)

¹ **WHETHER APPROVED FOR REPORTING?** Yes.

This petition coming on for orders this day, the Court passed the following:

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

ORDER

The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 60 of 2021, dated 25.03.2021, under Section 18 of the ND&PS Act, registered at Police Station Boileauganj, District Shimla, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 25.03.2021, a police team was on routine patrol duty and at about 07:55 p.m. present at Shoghi. In the interregnum a bus of Punjab Roadways, having registration No. PB13 BC 5419, came from Solan side towards Shimla, which was stopped for checking. Police found a person sitting on seat No. 19 and he was holding a bag in his lap. When the police asked the reason for his travel, he turned perplexed and could not answer satisfactorily. As the police had suspicion on the aforesaid person, two independent witnesses were associated and in their presence the person sitting on seat No. 19 divulged his name as Giri Raj (petitioner herein).

Thereafter, the police checked the bag of the petitioner and found some brownish substance, which was opium, weighing 1.979 kgs. Police completed all the codal formalities and the petitioner was arrested. Entire proceedings were videographed and photographed. A case under the apt Section of ND&PS was registered and the investigation ensued. Police recorded the statements of the witnesses and prepared the spot map. During the course of interrogation, the petitioner divulged that he met at Nepal Border a person, namely Mahinder, who handed over the opium to him and directed to transport the same and deliver it to a person at Rohru. He has further divulged that he was given Rs.2000/- and assured to be paid Rs.10000/-. As per the police, the petitioner did not disclose the mobile number of the recipient of the consignment of the contraband. The report of the chemical examination reveals that the recovered contraband is opium. Investigation in the case is complete and on 17.05.2021, *challan* stands presented in the learned Trial Court. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found transporting huge quantity of opium. The petitioner is a resident of Nepal, so, in case he is enlarged on bail, at this stage, he may tamper with the prosecution evidence and may also flee from justice. It is prayed that at this stage, the bail application of the petitioner be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, as investigation is complete; nothing remains to be recovered at the instance of the petitioner and *challan* stands presented in the learned Trial Court. The custody of the petitioner is not at all required by the police for investigation, so the petitioner is required to be enlarged on bail by allowing the instant bail application. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence and considerable quantity of opium was recovered from his possession, which he was allegedly transporting, so in case the petitioner is enlarged on bail, at this stage, he may tamper with the prosecution evidence and may also flee from justice, as he is resident of Nepal. It is prayed that the bail application of the petitioner be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is neither in a position to flee from

justice nor in a position to tamper with the prosecution evidence. His custody is not at all required by the police, as the investigation is complete, nothing remains to be recovered at the instance of the petitioner, even *challan* stands presented in the learned Trial Court. Moreover, the petitioner is behind the bars for the last more than six months and cannot be kept behind the bars for an unlimited period, so the petitioner may be enlarged on bail by allowing the instant bail petition.

7. At this stage, considering the fact that the alleged recovered quantity of contraband is less than commercial quantity, so rigors of Section 37 of the ND&PS Act are not applicable to the instant case, the fact that the petitioner is first time offender, considering age of the petitioner, who is only 24 years old, the fact that now the investigation is complete, even *challan* stands presented in the learned Trial Court, the custody of the petitioner is not at all required by the police, as nothing remains to be recovered at the instance of the petitioner, the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice and also considering all the facets of the case and without discussing them elaborately at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail, is required to be exercised in his favour. Accordingly, the petition is allowed and it

is ordered that the petitioner, in case FIR No. 60 of 2021, dated 25.03.2021, under Section 18 of the ND&PS Act, registered at Police Station Boileauganj, District Shimla, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of Rs.50,000/- (rupees fifty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/ Police/ authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner will 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 Investigating Officer or Court.

8. In view of the above, the petition is disposed of.

9. Needless to say that the observations made hereinabove are only confined for adjudication of the present case and the same shall have no bearing on the merits of the main case, which shall be adjudicated on its own.

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5th October, 2021
(virender)

(Chander Bhusan Barowalia)
Judge