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IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 26th OF OCTOBER, 2021

BEFORE

HON'BLE MR. JUSTICE AJAY MOHAN GOEL

CRIMINAL MISC. PETITION (MAIN) No. 1676 OF 2021

Between:-

GAURAV THAKUR, SON OF SUBHASH
CHAND, AGED 20 YEARS, RESIDENT
OF VILLAGE AND POST OFFICE DHAR
TATOH, TEHSIL SADAR, DISTRICT
BILASPUR, HIMACHAL PRADESH
PRESENTLY IN JUDICIAL CUSTODY
AT SUB JAIL, KAITHU, DISTRICT
SHIMLA, HIMACHAL PRADESH.

.....PETITIONER

(BY SH. TARA SINGH CHAUHAN, ADVOCATE)

AND

THE STATE OF HIMACHAL PRADESH
THROUGH DISTRICT MAGISTRATE,
SHIMLA, DISTRICT SHIMLA,
HIMACHAL PRADESH.

.....RESPONDENT

(BY M/S ADARSH SHARMA AND SANJEEV
SOOD, ADDITIONAL ADVOCATE GENERALS)

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

ORDER

By way of this petition filed under Section 439 of the
Code of Criminal Procedure, the petitioner has prayed for grant of

regular bail in FIR No. 181 of 2021, dated 19.08.2021, registered at Police Station West (Boileauganj), District Shimla, H.P. under Section 21 of the Narcotic Drugs and Psychotropic Substances Act 1985 (hereinafter to be referred as the 'NDPS Act' for short).

2. Mr. Tara Singh Chauhan, learned Counsel for the petitioner has argued that the applicant, who is a 20 years old boy, is innocent and has been falsely implicated in the case. He has further argued that now as the investigation is complete and no recovery etc. remains to be effected at the instance of the petitioner, therefore also, taking into consideration the fact that the recovery of the *chitta* allegedly made from the petitioner is of intermediate quantity, the petitioner be released on bail as no purpose is going to be served by detaining him further in custody. He stated that in the event of the petitioner being released on bail, he shall abide by all the conditions that may be imposed upon him. He has also submitted that there is no previous history of the petitioner being involved in any such offence, and therefore also, the Court may sympathetically consider the prayer of the petitioner for release on bail especially keeping in view his tender age.

3. The petition is opposed by the State on the ground that 19.5 grams of *chitta* was recovered from the conscious possession of the petitioner and the mode and manner in which the recovery

was effected, as is evident from the status report, also demonstrates that the petitioner is involved in the illicit business of sale of drugs. It is further argued on behalf of the State that taking into consideration the gravity of the offence, the present petitioner does not deserves to be released on bail. Accordingly, a prayer has been made for dismissal of the petition.

4. I have heard learned Counsel for the petitioner as well as learned Additional Advocate General and also gone through the averments made in the bail petition as well as the status report.

5. The case of the prosecution is that on 19.08.2021, a police party was on duty near Hira Nagar, keeping an eye on the movement of vehicles in view of impending visit of VIP to the town. During the course of checking of vehicles, one bus, which was on its way from Hamirpur to Reckong Peo via Shimla, bearing registration No. HP-25A-1882, was stopped. On seat No. 24, the petitioner was found sitting, who was holding a orange coloured zipper in his arms. When the police party asked from him as to what was the purpose of his visit, the petitioner got perplexed and he could not give any satisfactory answer. On that, the police party suspected that there may be some suspicious article with the petitioner. This led to his search, which resulted in the recovery of 19.52 grams of *chitta* from him. The petitioner was thereafter

arrested by following the codal formalities and he is stated to be in custody since then.

6. Having heard learned Counsel for the parties and taking into consideration the totality of the circumstances involved in this case, including the factum of the petitioner being a 20 years old boy and no previous criminal history of the petitioner being involved in an offence punishable under the NDPS Act, this Court is of the considered view that as the investigation is complete and the petitioner is in judicial custody, no purpose is going to be served by keeping him further in judicial custody. The Court is making this observation on the ground that it is not in dispute that the contraband recovered from the conscious possession of the petitioner is of intermediate quantity and further what is weighing with the Court is the tender age of the petitioner. Whether or not the petitioner is guilty of the offence alleged against him is a matter of trial. If ultimately, he is convicted for the commission of the offence allegedly committed by him, then, but obvious, he will face the consequences. However, as he is just 20 years old and has been allegedly apprehended with intermediate quantity of *chitta* and has no previous criminal history of having committed an offence under the NDPS act, therefore, in these peculiar circumstances, this petition is allowed by ordering the release of the petitioner in FIR No. 181 of 2021, dated 19.08.2021,

registered at Police Station West (Boileauganj, District Shimla, H.P. under Section 21 of the NDPS Act, on his furnishing personal bail bond to the tune of ₹50,000/- with one surety in the like amount to the satisfaction of the learned trial Court, within a period of two weeks from today, subject to the following conditions:-

- *Petitioner shall attend the trial 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;*
- *He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever.*
- *He shall not 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 or the Police Officer; and*
- *He shall not leave the territory of this Country.*

7. It is clarified that findings which have been returned by this Court while deciding this petition are only for the purpose of adjudication of the present bail petition and learned trial Court shall not be influenced in any manner whatsoever by any of the findings so returned by this Court in the adjudication of this petition during the course of the trial of the case. It is further clarified that in case the petitioner does not comply with any of the conditions, which have been imposed upon him while granting the

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present bail, the State shall be at liberty to approach this Court for the cancellation of the bail. The petition stands disposed of in the above terms.

Copy dasti.

(Ajay Mohan Goel)
Judge

October 26, 2021
(narender)