

(2019) 12 SHI CK 0043

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 2155 Of 2019

Amarjeet Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 13-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 164, 436, 436A, 439
Indian Penal Code, 1860 — Section 120B, 363, 366, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 4
Constitution Of India, 1950 — Article 21

Citation : (2019) 12 SHI CK 0043

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Yashveer Singh Rathore, Sudhir Bhatnagar, Arvind Sharma, Anil Jaswal, Kunal Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Bail petitioner, namely Amarjeet Singh, who is behind the bars since 5.12.2017, has approached this Court in the instant proceedings filed under S.439 CrPC, for grant of regular bail in case FIR No. 112, dated 15.10.2017 under Ss. 363, 366, 376 and 120B IPC and S.4 of Protection of Children from Sexual Offences Act, registered at Police Station Aut, District Mandi, Himachal Pradesh.

2. Sequel to orders dated 25.11.2019/5.12.2019, SI Yashpal has come present with the record. Mr. Kunal Thakur, learned Deputy Advocate General states that he has already filed a status report on previous and date and he does not intend to file any fresh status report. Record perused and returned.

3. Record made available to this Court reveals that FIR, detailed herein above came to be lodged on the basis of statement made by complainant Smt.

Damodari Devi, who in her statement recorded under S.154 CrPC, alleged that her minor daughter, victim-prosecutrix (name withheld) aged 16 years, has gone missing. She alleged that on 15.10.2017, victim-prosecutrix informed her over telephone that she has solemnised marriage and she is at Ludhiana. Complainant alleged that some unknown person taking undue advantage of minority of her daughter, has made her elope with him as such, appropriate action be taken. As per investigation, on 19.10.2017, bail petitioner, with whom victim-prosecutrix had allegedly eloped, dropped her at Pandoh. Police, after getting victim-prosecutrix medically examined got her statement recorded under S.164 CrPC before Judicial Magistrate 1st Class, Gohar, wherein she stated that on 14.10.2017, co-accused Praneet Kaur alias Bittu, met her at Pandoh, from where she took her to her house at Sangrur. She stated that daughter of her aunt (cousin) introduced her to Praneet Kaur, who is sister-in-law of the bail petitioner. She stated that from 15.10.2017 till 17.10.2017, she remained at the residence of Praneet Kaur at Sangrur. On 15.10.2017, her mother asked her to return home immediately and on 17.10.2017, Amarjeet, bail petitioner, dropped her outside Police Station at Pandoh. She categorically deposed before Judicial Magistrate 1st Class Gohar, District Mandi, that she of her own volition and without there being any external pressure had gone to Sangrur alongwith Praneet Kaur, without disclosing to her parents. She deposed that her cousin, Sapna, had told her that bail petitioner is a good boy and her marriage is to be solemnised with him. On the basis of aforesaid statement made by victim-prosecutrix, FIR in question came to be lodged against the bail petitioner on 15.10.2017 under aforesaid provisions and since 15.12.2017, bail petitioner is behind the bars i.e. for around two years now.

4. Mr. Kunal Thakur, learned Deputy Advocate General, while fairly admitting that the Challan stands filed in the competent Court of law and nothing remains to be recovered from the bail petitioner, strenuously argued that keeping in view the gravity of offence alleged to have been committed by bail petitioner, he does not deserve any leniency rather the bail petitioner needs to be dealt with severely as such, petition may be rejected outrightly. While, making this Court peruse the record, Mr. Thakur, learned Deputy Advocate General contended that though there is ample evidence suggestive of the fact that bail petitioner in connivance with Praneet Kaur took victim-prosecutrix to Sangrur with a view to solemnise marriage but even otherwise, if it is presumed that the victim-prosecutrix was a consenting party, consent, if any, of victim-prosecutrix being minor, is of no consequence, as such, prayer made on behalf of the bail petitioner may be rejected.

5. Having heard learned counsel for the parties and perused the material available on record, especially statements of victim-prosecutrix recorded under Ss. 161 and 164 CrPC, this Court is convinced and satisfied that at no point of time, bail petitioner took victim-prosecutrix to Sangrur rather, she (victim-prosecutrix) of her own volition and without there being any external pressure, went to Sangrur alongwith co-accused Praneet Kaur, who had come to Pandoh to

visit her parental house. If statement of victim-prosecutrix recorded under S.164 CrPC is read in its entirety, it nowhere suggests that she was sexually assaulted against her wishes by the bail petitioner. She has nowhere stated that with effect from 15.10.2017 to 17.10.2017, she ever came into contact with the bail petitioner, who otherwise happened to brother-in-law of co-accused Praneet Kaur. It has come in her statement that though her cousin Sapna wanted to solemnise her marriage with the bail petitioner but there is nothing on record suggestive of the fact that bail petitioner solemnised marriage with the victim-prosecutrix. Moreover, if statements of victim-prosecutrix recorded under Ss. 161 and 164 CrPC are read juxtaposing the complaint made by complainant, there are material contradictions and inconsistencies with regard to alleged incident. Even medical evidence adduced on record does not support the prosecution case.

6. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court in the totality of evidence collected on record by the investigating agency, but having carefully perused the statements of victim-prosecutrix recorded under Ss. 161 and 164 CrPC, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when he has already suffered for two years now. Otherwise also, guilt, if any, of the bail petitioner is yet to be determined in the totality of the evidence collected on record by the prosecution and as such, it may not be in the interest of justice to curtail the freedom of the bail petitioner for an indefinite period during trial.

7. Hon'ble Apex Court and this Court have repeatedly held that a person is deemed to be innocent till his/her guilt is proved in accordance with law. In the case at hand, guilt, if any, of the bail petitioner is yet to be determined in the totality of the evidence collected on record by the prosecution, as such, keeping the bail petitioner behind the bars during trial, would amount to curtailing freedom of the bail petitioner.

8. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr decided on 6.2.2018 has held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

"2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost

sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*."

9. By now it is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation (2012)*¹ Supreme Court Cases 49; has been held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

10. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

11. In *Manoranjana Sinh alias Gupta versus CBI*, (2017) 5 SCC 218, Hon'ble Apex Court has held as under:

"This Court in *Sanjay Chandra vs. Central Bureau of Investigation* (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of

imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

12. The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

13. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to his furnishing bail bonds in the sum of Rs.1,00,000/- (Rupees One Lakh) with one local surety in the like amount, to the satisfaction of the Investigating Officer/learned trial Court concerned, besides the following conditions:

- (a) He shall make himself available for the purpose of interrogation, if so required and regularly 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;
- (b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) He shall not make any inducement, threat or promises 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

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender passport, if any, held by him.

14. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

15. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this petition alone.

The petition stands accordingly disposed of.