

(2020) 06 SHI CK 0161

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 751, 752 Of 2020

Buta Singh @ Kala And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 154, 436, 436A, 439

Indian Penal Code, 1860 — Section 34, 109, 120B, 201, 202, 307, 341, 427

Citation : (2020) 06 SHI CK 0161

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : V.S. Chauhan, Ajay Kumar Chauhan, Sudhir Bhatnagar, Arvind Sharma

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Bail petitioners namely Buta Singh and Sohan Lal, who are behind bars since 10.2.2020, have approached this Court in the instant proceedings, filed under Section 439 Cr.PC, praying therein for grant of regular bail in case FIR No. 14/2020, dated 10.2.2020, under Sections 341, 427, 307, 109, 120-B, 201 and 202 read with Section 34 of IPC, registered at PS Sadar, District Solan, H.P.

2. Status report filed in terms of order dated 14.5.2020, suggests that on 10.2.2020, person namely Gitesh Kaith, lodged a complaint at PS Sadar, District Solan, alleging therein that he is a driver of car bearing registration No. HP-64-A-7539 owned by Sh. Raj Kumar Mittal. Above named complainant alleged that on 10.2.2020, while he alongwith Smt. Amita Mittal wife of Sh. Sanjay Mittal was going towards Saproon post office from Solan Bazar, one car of Tata make (number plate missing) overtook his vehicle and stopped the same. He alleged that three persons sitting in the aforesaid car attacked him as well as Smt. Amita Mittal with axe and smashed front and side windows of the car being driven by

him. Complainant alleged that had he not saved himself, he alongwith Smt. Amita Mittal would have suffered grievous injuries and as such, appropriate action, in accordance with law, be taken against the occupants of the car of Tata make.

3. After having received aforesaid complaint, police apprehended the vehicle of the accused at Parwanoo check post and brought all the occupants of the car including present bail petitioners to Police Station Sadar, District Solan, H.P. After completion of codal formalities, police lodged FIR, detailed hereinabove, against all the accused persons on 10.2.2020 and since then present bail petitioners are behind the bars, whereas two other accused namely Rohit Sharma and Sukhdev Singh, stand enlarged on bail vide order(s) dated 30.4.2020 and 27.5.2020 passed by this Court in Cr.MP(M) No.491 of 2020 and Cr.MP(M) No. 622 of 2020.

4. Mr. Arvind Sharma, learned Additional Advocate General while fairly admitting factum with regard to enlargement of two other co-accused on bail contends that though challan stands filed in the competent court of law and nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by the bail petitioners, they do not deserve to be released on bail. Learned Additional Advocate General further contends that two accused Rohit Sharma and Sukhdev Singh were enlarged on bail for the reason that their direct participation in the offence was not found by this Court. He contends that allegation against the bail petitioner Rohit is/was that he provided shelter to the bail petitioners/co-accused, whereas allegation against other person Sudkhdev was that he was also one of the occupants of the car. Bail petitioners herein Buta Singh and Sohan Lal with an intention to kill the occupants of the car smashed the front and side windows of the car being driven by the complainant and as such, no parity with other co-accused, can be claimed by the bail petitioners while seeking bail. Mr. Sharma, contends that it stands established on record that bail petitioners had come to Solan with an intent to kill Raj Kumar Mittal and his other family members and as such, present bail petitioners deserve no leniency. Lastly, learned Additional Advocate General submits that since bail petitioners hail from the State of Haryana, it would be difficult to secure their presence in trial in the event of their being enlarged on bail and as such, their application may kindly be rejected.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that two accused namely Rohit and Sukhdev already stand enlarged on bail and challan stands filed in the competent court of law. This Court further finds from the record that precisely case of the prosecution is that the bail petitioners alongwith other co-accused had been staying in Home Stay i.e., Nagali Home Stay, Solan with an intent to commit the offence in issue. Though, as per the complainant, occupants of the car of Tata make made an attempt to cause grievous injuries to the driver as well as occupants of the car bearing registration No. HP-64-A-7539 owned by Sh. Raj Kumar Mittal, but it is not in dispute in the case at hand that no injury was

suffered by the complainant and other occupant namely Amita Mittal. Interestingly, in the case at hand, though case of the prosecution is that all the accused made an attempt to cause grievous injury to the driver as well as occupant of the car namely Amita Mittal, but it is not understood that what prevented the police to get the identification parade done immediately after the arrest of occupants of the car of Tata make, especially when they all were brought to police Station immediately after the alleged incident.

6. If the initial statement of the complainant recorded under Section 154 Cr.P.C., is perused, there is no mention, if any, with regard to antecedents as well as identification, if any, of persons, who allegedly attacked the car bearing registration No. HP-64-A-7539. Hence, there is no force in the argument of learned Additional Advocate General that since bail petitioners herein took active participation in the crime, they cannot claim parity with other co-accused namely Rohit and Sukhdev. Similarly, there is no whisper, if any, with regard to threats, if any, allegedly extended to the occupants of the car bearing registration No. HP-64-A-7539 or to Sh. Raj Kumar Mittal and his other family members. Though in the case at hand, prosecution with a view to demonstrate the complicity of accused has heavily relied upon CCTV footage, but since complainant and other occupant of the car allegedly attacked by the accused have not identified the accused, guilt, if any, of the bail petitioner and other co-accused cannot be concluded/ascertained at this stage merely on the statement of the complainant.

7. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence to be collected on record by the investigating agency, but having noticed aforesaid aspect of the matter coupled with the fact that no injury has been suffered by the occupants of the car bearing registration No. HP-64-A-7539, this Court sees no reason to keep the bail petitioner behind the bars for indefinite period during trial. Guilt, if any, of the bail petitioner is yet to be ascertained/ established in accordance with law by the Investigating Agency by leading cogent and convincing evidence and as such, it would not be fair to curtail the freedom of the bail petitioner for indefinite period during the trial. Apprehension expressed by learned Additional Advocate General with regard to petitioner's fleeing from justice in the event of his being enlarged on bail, can be best met by putting him to stringent conditions, as has been fairly admitted by the learned counsel representing the bail petitioner.

8. It has been repeatedly held by Hon'ble Apex Court as well as this Court in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law. In the case at hand, the guilt, if any, of the bail petitioner is yet to be proved, in accordance with law.

9. 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. 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.

10. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)1 Supreme Court Cases 49; 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."

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

" This Court in *Sanjay Chandra v. CBI*, 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 or 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 to 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 ad 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 the 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 Hon'ble Apex Court in *Prasanta Kumar Sarkar v. 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. Reliance is placed on judgment passed by the Hon'ble Apex Court in case titled *Umarmia Alias Mamumia v. State of Gujarat*, (2017) 2 SCC 731, relevant para whereof has been reproduced herein below:-

"11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6 SCC 731; *Shaheen Welfare Assn. v. Union of India*, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: *Paramjit Singh v. State (NCT of Delhi)*, (1999) 9 SCC 252 and *Babba v. State of Maharashtra*, (2005) 11 SCC 569).

14. 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 categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, 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. Hon'ble

Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced 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*.

15. Consequently, in view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, the petitioners have carved out a case for grant of bail, accordingly, the petitions are allowed and the petitioners are ordered to be enlarged on bail in aforesaid FIR, subject to their furnishing personal bonds in the sum of Rs. 2,00,000/- each with one local surety each in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with following conditions:

- a. They shall make themselves 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. They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- c. They shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the Police Officer; and
- d. They shall not leave the territory of India without the prior permission of the Court.
- e. They shall handover the passports to the Investigating Agency within a period of ten days from their release on bail.

16. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

17. Any observations made hereinabove shall not be construed to be a reflection on the merits of the cases and shall remain confined to the disposal of these applications alone.

The bail petitions stand disposed of accordingly. Dasti on usual terms.