

(2020) 09 SHI CK 0153

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1564 Of 2020

Desh Raj And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 420, 467, 471
Code Of Criminal Procedure, 1973 — Section 437(3), 438, 438(2), 446, 446A

Citation : (2020) 09 SHI CK 0153

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Rajesh Verma, Nand Lal Thakur, Divya Sood

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. The petitioners, apprehending their imminent arrest on being arraigned as accused persons, have come up under section 438 CrPC, seeking anticipatory bail.

2. Based on the complaint, the Police registered FIR No.259 of 2019, dated 8.10.2019, under Sections 420, 467, 471 and 120-B of the Indian Penal Code, 1860, (IPC), in Police Station, Sadar Chamba, District Chamba, Himachal Pradesh, disclosing cognizable and non-bailable offences.

3. I have heard counsel for the parties.

FACTS:

4. Briefly, the allegations against the petitioners are of committing fraud.

PREVIOUS CRIMINAL HISTORY

5. The counsel for the petitioners states that the accused have no criminal history. He further submits that conditions may be put that in case the petitioners repeat the offence, this bail may be canceled.

SUBMISSIONS:

6. Learned counsel for the bail petitioners submits that the allegations are false and concocted and they are joining and fully co-operating in the investigation.

7. Ms. Divya Sood, learned Deputy Advocate General, submits that the petitioners have joined the investigation. She further submits that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

8. JUDICIAL PRECEDENTS:

a) In *Gurbaksh Singh Sibbia and others v. State of Punjab*, 1980 (2) SCC 565, a Constitutional bench of Supreme Court holds in Para 30, as follows:

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

b) In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, a three-member bench of Supreme Court holds:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a *prima facie* case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of *prima facie* case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

c) In *State of Rajasthan, Jaipur v. Balchand*, AIR 1977 SC 2447, Supreme Court holds:

"2. The basic rule may perhaps be tersely put as bail, not jail, except where

there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime."

d) In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240, Supreme Court in Para 16, holds:

"The delicate light of the law favours release unless countered by the negative criteria necessitating that course."

e) In *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22, Supreme Court holds:

"1. 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.

6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

ANALYSIS AND REASONING:

9. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

10. The nature of the offence also does not restrict bail. The incarceration of the accused during the period of trial is neither warranted, nor justified, or going to achieve any significant purpose. Without commenting on the merits of the case, coupled with the ongoing situation due to the Covid-19 pandemic, would make out a case for bail.

11. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative conditions and stringent conditions.

12. Given the fact that the offence attracted provides for a maximum sentence of seven years, therefore, this Court is inclined to grant bail on this count.

13. Given the above reasoning, the Court is granting bail to the petitioners, subject to the imposition of following stringent conditions, which shall be over and above, and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC. Consequently, the present petition is allowed. The petitioners shall be released on bail in the present case, connected with the FIR mentioned above, on their furnishing personal bonds of INR 10,000/, (INR Ten thousand only) each, with one surety for INR 5,000 (INR Five thousand only) each, to the satisfaction of the Investigator/ SHO of the concerned Police Station. The furnishing of bail bonds shall be deemed acceptance of all stipulations, terms, and conditions of this bail order:

a) The Attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioners along with the phone number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

b) The petitioners shall join investigation as and when called by the Investigating officer or any superior officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioners shall not be called before 8 AM and shall be let off before 5 PM. The petitioners shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.

c) The petitioners shall join and cooperate in the investigation, and failure to do so shall entitle the prosecution to seek cancellation of the anticipatory bail granted by the present order. (Kala Ram v. State of Punjab, 2018 (11) SCC 350).

d) The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

e) Once the trial begins, the petitioners shall not in any manner try to delay the trial. The petitioners undertake to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioners shall attend the trial on each date, unless exempted.

f) There shall be a presumption of proper service to the petitioners about the date of hearing in the concerned Court, even if it takes place through SMS/ WhatsApp message/ E-Mail/ or any other similar medium, by the Court.

g) In the first instance, the Court shall issue summons and may inform the petitioners about such summons through SMS/ WhatsApp message/ E-Mail.

h) In case the petitioners fail to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioners about such Bailable warrants through SMS/ WhatsApp message/ E-Mail.

i) Finally, if the petitioners still fail to put in an appearance, then the concerned Court may issue Non-Bailable warrants to procure the petitioners' presence and send the petitioners to the Judicial custody for a period for which the concerned Court may deem fit and proper.

j) In case of Non-appearance, then irrespective of the contents of the bail bonds, the petitioners undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioners' failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioners. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioners and it relates to the exercise undertaken solely to arrest the petitioners in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

k) The petitioners shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within thirty days from such modification, to the police station of this FIR, and the concerned Court, if such stage arises.

l) The petitioners shall abstain from all criminal activities. If done, then while considering bail in the fresh FIR, the Court shall take into account that even earlier, the Court had cautioned the accused not to do so.

m) During the trial's pendency, if the petitioners repeat the offence or commit any offence where the sentence prescribed is seven years or more, then the State may move an appropriate application for cancellation of this bail.

n) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioners. Otherwise, the bail bonds shall continue to remain in force throughout the trial.

14. The learned Counsel representing the accused and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order to the petitioners, in vernacular and if not feasible, in Hindi or English.

15. In case the petitioners find the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for

modification of such term(s), the petitioners may file a reasoned application before this Court, and after taking cognizance, even before the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

16. In *Sushila Aggarwal vs. State (NCT of Delhi) and another*, (2018) 7 SCC 731, the Constitutional Bench concluded by holding as follows:

"(2) As regards the second question referred to this court, it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.

(3) Nothing in Section 438 Cr. PC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified - and ought to impose conditions spelt out in Section 437 (3), Cr. PC [by virtue of Section 438 (2)]. The need to impose other restrictive conditions, would have to be judged on a case by case basis, and depending upon the materials produced by the state or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed."

17. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation in accordance with law.

18. The present bail order is only for the FIR mentioned above. It shall not be a blanket order of bail in any other case(s) registered against the petitioners.

19. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

20. The Investigating Officer attesting the bonds shall not insist upon the certified copy of this order and shall download the same from the website of this Court, or accept a copy attested by an Advocate, which shall be sufficient for the record. The Court Master shall handover an authenticated copy of this order to the Counsel for the petitioners and the Learned Advocate General if they ask for the same.

21. It is clarified that in case the petitioners do not cooperate in the

investigation, then on this ground alone, the State shall have a right to file an application for cancellation of this bail, ipso facto on the ground of non-cooperation. The petitioners are further directed to continue to join investigation.

22. In return of the protection from incarceration for breaking the law, the Court believes that the accused shall also reciprocate through desirable behavior.

The petition stands allowed in the terms mentioned above. All pending applications, if any, stand closed.