

(2018) 05 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : CrMP(M) No. 518 of 2018

Devi Lal	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 15-05-2018

Acts Referred:

Narcotic Drugs & Psychotropic Substances Act, 1985 — Section 18, 37
Constitution of India — Article 21

Citation : (2018) 05 SHI CK 0020

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : Dalip K. Sharma, S.C. Sharma, Dinesh Thakur, Amit Kumar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

1. By way of instant bail petition filed under Section 439 CrPC, prayer has been made for grant of regular bail in FIR No. 94/2017 dated 21.11.2017

under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 registered at Police Station, Re Kong Peo, District Kinnaur, Himachal Pradesh.

2. Sequel to order dated 1.5.2018, SI Deepak Thakur, SHO, Police Station, Re Kong Peo has come present with the record. Mr. Dinesh Thakur,

Additional Advocate General has also placed on record status report, prepared on the basis of investigation carried out by the investigating agency.

Record perused and returned.

3. Close scrutiny of the status report reveals that on 21.11.2017, police party recovered opium weighing 259 grams from the packet being carried by

the present bail petitioner, Since 21.11.2017, bail petitioner, who is 75 years old, is behind bars.

4. Mr. Dalip K. Sharma, learned counsel representing the bail petitioner, while referring to the record/status report vehemently argued that the bail

petitioner, who is 75 years old, has been falsely implicated in the case because at the time of alleged recovery, no independent witness was ever

associated and as such, it is quite apparent that the bail petitioner has been falsely implicated in the case. While inviting attention of this Court to the

medical evidence placed on record, Mr. Sharma, contended that the petitioner had fallen ill and as such, he was taken to the hospital on the directions

of the Superintendent of Police, as such, it would not be safe to keep him behind the bars for indefinite period. Mr. Dalip K. Sharma, learned counsel

representing the bail petitioner further contended that otherwise also, contraband allegedly recovered from the bail petitioner is less than commercial

quantity and as such, rigours of Section 37 of the Act *ibid* are not attracted in the present case and bail petitioner is entitled to be released on bail.

Lastly, Mr. Sharma contended that the bail petitioner is a local resident and he shall always be available for investigation and trial, as and when called

by the investigating agency.

5. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly admitting the factum with regard to illness of bail petitioner contended that at

present bail petitioner is hale and hearty, but, at one point of time, on his request, he was taken to hospital. Learned Additional Advocate General

further contended that though the quantity recovered from bail petitioner is less than commercial quantity, but given his past conduct, bail petitioner is

not entitled to be released on bail.

6. I have heard the learned counsel for the parties and gone through the record carefully.

7. Having carefully perused the medical evidence adduced on record, this Court finds that bail petitioner is 75-76 years old and suffering from various

ailments, as such, it may not be appropriate to keep him behind the bars for indefinite period. Otherwise also, contraband allegedly recovered from the

bail petitioner is less than commercial quantity and as such, rigours of Section 37 of the Act *ibid* are not attracted in the present case, as such, prayer

having been made in the present petition deserves to be accepted. Though Mr.

Dinesh Thakur, learned Additional Advocate General has stated that the petitioner had been indulging in illegal trade of narcotics in the past also, but in this regard no material has been placed on record. Otherwise also, it is well settled by now that pendency of previous case(s) may not be a ground to reject the bail petition filed in another case, rather same is required to be decided in the given facts and circumstances. Similarly, no material has been placed on record by the investigating agency from where it can be inferred that in the event of being enlarged on bail, there is likelihood of bail petitioner fleeing from justice.

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 guilt has not been proved. It has been 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 doesnot 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.”

9. By now it is well settled that gravity alone cannot be 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 purpose of giving him a taste of imprisonment as a lesson."

10. In *Manoranjana Singh 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.â??

11. 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 and circumstances which are peculiar to the accused involved in that crime.

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, present bail petition is allowed. Petitioner is ordered to be enlarged on bail subject to his furnishing bail bonds in the sum of

Rs.1,00,000/- (Rs. One Lakh) with one local surety in the like amount, to the satisfaction of the learned trial Court, besides 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 violate 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 instant petition alone. The petition stand accordingly disposed of.