

(2014) 04 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Cr. M.P. (M) Nos. 479, 480 and 481 of 2014

Dwarku Devi

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 437, 437(1), 438, 439
Penal Code, 1860 (IPC) — Section 149, 202, 302, 34, 376

Citation : (2014) 2 ShimLC 882

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Ajay Kochhar and Satyen Vaidya, Advocate for the Appellant; D.S. Nainta, Additional Advocate General and Parul Negi, Deputy Advocate General, Advocate for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—The petitioners have preferred these petitions, u/s 439 Cr.P.C., for grant of bail in case FIR No. 35 of 2014 dated 21.2.2014, registered at Police Station, Dhalli, Shimla, under Sections 302, 376, 202 read with Section 34 IPC. The status report has been filed by the respondent-State. The prosecution story as emerges is that on 21.2.2014, at about 12.05 a.m., Sh. Deep Ram Sharma, driver of Tanker bearing registration No. HR-37B-6499 reported to police station, Dhalli that when he was returning back from Bithal Rampur to Shimla, then at place Rain Shelter Sadhora, they found a lady in naked position, who was crying to save her. There was a car parked nearby in which three-four people were sitting. They did not stop out of fear. On this information, the investigation team rushed to the spot and found a dead body of a lady in a naked state. On the basis of rukka, FIR was registered. Investigating agency swung into action. There were tyre marks of vehicle found on the spot. The post mortem examination of the dead body was conducted. The viscera, vaginal swab and smear were sent for chemical analysis to Forensic Laboratory Junga. The accused persons were arrested. It was revealed that accused Pankaj

Modi had caused the death of lady, who was later on identified to be Chitra, by crushing her inside the wheels of Maruti Alto bearing registration No. HP-01A-2723. All the other accused persons including petitioners were also arrested for the participation in crime of alleged offence. Hence, accused persons were booked for commission of offence of rape coupled with murder of deceased Chitra in furtherance of common intention and intentionally omitting to give any information in respect of that offence which they were legally bound to give.

2. The prosecution has mainly relied on the statement of Kumari Anjana, recorded u/s 161 Cr.P.C. to oppose the bail applications and it is alleged that petitioners are accused of having committed not only a serious but a heinous offence. It is stated that here was a case where a lady had been crying for help but was found murdered in cold blood and in a most diabolic manner because she had died as a result of crush injury. As per medical opinion, the cause of death was shock in haemorrhage as a result of multiple ante mortem injuries. All injuries described are anti mortem in nature. Not only this, there were as many as 48 external ante mortem injuries found on the deceased.

3. On the other hand Sh. Ajay Kochhar alongwith Sh. Satyen Vaidya, learned Counsel for the petitioners would contend that it was highly unimaginable that the present accused out of whom applicant Nirmala Devi happens to be the real aunt of the deceased would have facilitated the crime in furtherance of common intention with other co-accused. Even the two other accused were only trying to find out the whereabouts of the deceased and were therefore concerned with her well being and had no intention to harass her.

4. It has been strenuously argued that in fact the petitioners have been falsely implicated in the case. The law with regard to grant of bail is now well settled. As early as in the year 1978, the Hon''ble Supreme Court in Gurcharan Singh and Others Vs. State (Delhi Administration), , laid the following criteria for grant of bail:

"22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 Cr.P.C. if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) Cr.P.C. and, in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.

* * * * *

24. Section 439(1) Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike u/s 437(1) there is no ban imposed u/s 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable, with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail u/s 439(1) Cr.P.C. of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many valuable factors, cannot be exhaustively set out."

5. The Hon"ble Apex Court in *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another*, , has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima fade 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.

Thereafter, in a detailed judgment, the Hon"ble Supreme Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, , while relying upon its decision rendered by its Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, , laid down the following parameters for grant of bail:--

"111. No inflexible guidelines, or straitjacket formula can be provided for grant or

refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction u/s 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the

prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The Court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which "a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior Courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior Court against the Court of Sessions or the High Court is always available."

(Emphasis supplied)

6. In Sanjay Chandra Vs. CBI, , the Hon"ble Supreme Court made the following pertinent observations in paras 21, 22, 23, and 40 as under:--

"21. In bail applications, generally, it has been laid down from the earliest times that 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 is 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.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted 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 this country, 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.

23. Apart from the question of prevention being the object of a 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.

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required."

7. Keeping in mind the aforesaid exposition of law of the Hon"ble Supreme Court one has to see the factual matrix of the present case. As already observed above, the sheet anchor of the prosecution case is the statement of Kumari Anjana Kashyap, recorded, u/s 161 Cr.P.C., who is also supposed to be the eye witness in the case.

8. I have gone through the entire statement of Kumari Anjana Kashyap and from the same it can safely be gathered that bail petitioners herein were only concerned with the well being of the deceased and it is with this objective that they proceeded to find out the whereabouts of the deceased. In the entire statement of Kumari Anjana Kashyap, there is nothing which may even remotely suggest the complicity or involvement of the petitioners in the alleged crime. I need not dwell much on the statement of Kumari Anjana Kashyap lest it prejudices the case of the prosecution during the trial, but suffice it to say that the complicity of the petitioners can in no manner be clubbed or equated with that of other co-accused(s) in the case. In so far as the allegations regarding commission of offence, u/s 202 IPC is concerned, the offence is otherwise bailable.

9. Taking a holistic view of the matter, it cannot be said that petitioners, who are ladies, would in any manner impede the course and cause of justice or would hamper the free, fair and full investigation. Whether the petitioners would be convicted for the offence in question can only be determined during the course of the trial after complete material is placed on record by the parties. In the given facts and circumstances, the petitioners have made out a prima facie case for grant of bail. The petitioners are otherwise residents of District Shimla, therefore, there can be no reasonable apprehension of their fleeing from justice and even otherwise also stringent conditions for securing their presence for the purpose of investigation, trial etc. can always be imposed.

10. Accordingly, the petitioners are ordered to be released on bail subject to the following conditions: (i) the petitioners shall furnish bail bonds in the sum of Rs. 50,000/- each with one surety each of the like amount to the satisfaction of Chief Judicial Magistrate, Shimla, District Shimla.

(ii) it is clarified that the petitioners shall fully co-operate with the investigation;

(iii) they shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(iv) they 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;

(v) they shall not leave the country without prior permission of the Court.

The learned Chief Judicial Magistrate, Shimla, District Shimla is directed to comply with the directions issued by the High Court, vide communication No. HHC. VIG./Misc.Instructions/93-IV-7139 dated 18.03.2013.

Any observation made hereinabove shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove. All the petitions stand disposed of.

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