

(2018) 04 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : CrMP(M) No. 427, 428 of 2018

Gulshan Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 24-04-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 436, 436A
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 29, 37
Constitution of India — Article 21

Citation : (2018) LatestHLJ 727 (HP)

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : Dheeraj K. Vashisht, Dinesh Thakur, Vikrant??Chandel

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

CrMP No. 428 of 2018

1.For the reasons stated in the application, which is duly supported by an affidavit, application is allowed. Documents annexed to the application are taken on record.

CrMP(M) No. 427 of 2018

2.By way of instant bail petition filed under Section 438 CrPC, prayer has been made for grant of pre-arrest bail in connection with FIR No. 74/18 dated

5.4.2018 under Sections 20 and 29 of the Narcotic Drugs & Psychotropic Substances Act registered at Police Station Amb, District Una, Himachal

Pradesh.

3.Sequel to orders dated 10.4.2018 and 17.4.2018, Investigating Officer concerned has come present with record. Mr. Dinesh Thakur, learned 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.

4. Perusal of status report suggests that on 5.4.2018, Investigating Officer, on the basis of a secret information intercepted vehicle bearing registration No.

HP-72A-4040 at Amb. Occupants of the car after having seen the police made an attempt to run away but they were apprehended and on search of car,

contraband i.e. Charas weighing 111.34 grams was recovered. Allegedly, the present bail petitioner ran away leaving behind his car, whereas other two

occupants namely Gopal Giri and Raman were apprehended by the police, who disclosed during investigation that car belonged to the bail petitioner and at

the relevant time, bail petitioner was driving the vehicle. On the basis of information divulged by co-accused named herein above, FIR detailed herein

above came to be lodged against the bail petitioner and other co-accused named herein above. Investigation reveals that at the time of occurrence i.e.

5.4.2018, vehicle in question was being driven by the bail petitioner, who despite there being signal given by the police, speeded his car and managed to

get away.

5. It may be noticed that during the proceedings of the instant case held on 17.4.2018, Mr. Dheeraj K. Vashisht, learned counsel representing the bail

petitioner, while disputing presence of the bail petitioner on the spot, contended before this Court that though car belongs to bail petitioner but at the

relevant time, vehicle in question was being driven by a person namely Radhey Shyam, who has purposely not been interrogated by the police till date.

Taking note of aforesaid plea of the learned counsel representing the bail petitioner, this Court on 17.4.2018 specifically directed the Investigating Officer

to investigate the person named Radhey.

6. Mr. Dheeraj K. Vashisht, learned counsel representing the bail petitioner strenuously argued that keeping in view the medical condition of the bail

petitioner, who has suffered paralysis, story put forth by the investigating agency that the vehicle in question was being driven by the bail petitioner, is not

at all trustworthy rather, he has been falsely implicated in the case. Mr. Dheeraj K. Vashisht, Advocate, while inviting attention of this Court to the

medical record of the bail petitioner contended that he has suffered brain stroke and at present is under treatment from Dr. Rajinder Prasad Government

Medical College, Tanda. Lastly, Mr. Dheeraj K. Vashisht, submitted that otherwise also quantity allegedly recovered from the car of the bail petitioner is

less than commercial quantity i.e. 111.34 grams as such, rigours of Section 37 of the Narcotic Drugs & Psychotropic Substances Act are not attracted in

the present case and bail petitioner deserves to be enlarged on bail. He further contended that bail petitioner is a local resident and shall always remain

available for investigation and trial.

7.Mr. Dinesh Thakur, learned Additional Advocate General, while inviting attention of this Court to the fresh status report filed today, stated that the

person named Radhey and Chandan Thakur were interrogated by the police in terms of the direction issued by this Court and both of them categorically

disclosed to the investigating agency that on the date of alleged incident, vehicle was being driven by the present bail petitioner and they are not involved

in the offence allegedly committed by the bail petitioner and other co-accused.

8.Mr. Dinesh Thakur, learned Additional Advocate General opposed aforesaid prayer having been made by the learned counsel representing the bail

petitioner and contended that keeping in view the past record of the bail petitioner, against whom already three cases stand registered under Narcotic

Drugs & Psychotropic Substances Act, he does not deserve to be enlarged on bail. While fairly acknowledging the fact that the bail petitioner had

suffered brain stroke, while he was in jail in connection with some other case, Mr. Thakur contended that bail petitioner is a habitual offender and in the

event of being enlarged on bail, there is every likelihood of his indulging in illegal trade of narcotic substances and as such, it would not be safe to release

him on bail.

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

10.Though perusal of record/status report made available to this Court clearly suggests that on the date of alleged incident, vehicle in question was being

driven by bail petitioner, it also emerges from the investigation that bail petitioner has been indulging in illegal trade of narcotics in the past also and there

are three cases already registered against him under Narcotic Drugs & Psychotropic Substances Act but having perused the medical record, there

appears to be some force in the arguments of the learned counsel representing

the bail petitioner that very presence of bail petitioner on the spot is doubtful because as per medical record made available to the Court, bail petitioner is suffering from paralysis. It is also not in dispute that four months back, petitioner while in custody had suffered brain stroke and he was shifted to Dr. Rajinder Prasad Government Medical College, Tanda. Moreover, Bail petitioner has joined the investigation, as has been fairly admitted by the learned Additional Advocate General, on the instructions of the Investigating Officer and he is fully cooperating with the investigation, as such, this Court taking note of the health condition of the bail petitioner, sees no reason for custodial interrogation of the bail petitioner. The contraband allegedly recovered from the car owned by bail petitioner is also less than commercial quantity and as such, rigors of Section 37 of the Act *ibid* are not attracted.

11. In the totality of the circumstances discussed herein above, this Court is of the view that bail petitioner deserves to be enlarged on bail. No doubt, record made available to this Court suggests that the bail petitioner is a habitual offender and has been indulging in illegal trade of narcotics in the past also, but that cannot be a ground to deny bail to the bail petitioner.

12. Hon'ble Apex Court in *Maulana Mohammed Amir Rashadi v. State of U.P.* (2012) 2 SCC 382 has held that merely on the basis of criminal antecedents, the claim of the bail petitioner cannot be rejected. Hon'ble Apex Court has observed as under:

“10. It is not in dispute and highlighted that the second respondent is a sitting Member of Parliament facing several criminal cases. It is also not in dispute that most of the cases ended in acquittal for want of proper witnesses or pending trial. As observed by the High Court, merely on the basis of criminal antecedents, the claim of the second respondent cannot be rejected. In other words, it is the duty of the Court to find out the role of the accused in the case in which he has been charged and other circumstances such as possibility of fleeing away from the jurisdiction of the Court etc.”,,

13. In the case at hand, there is nothing on record suggestive of the fact that in the event of petitioner being enlarged on bail, he may flee from justice,”,, rather, petitioner being a local resident of District Una, shall always be available for the purpose of investigation and trial.”,,

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 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 has further held that if an accused 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:,,

â??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 21of 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.â??,,

15.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.",,,

16.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)whetherÂ thereÂ isÂ anyÂ primaÂ facieÂ 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.",,

17. In view of above, order dated 10.4.2018 is made absolute, subject to his furnishing furnish bail bonds in the sum of Rs.2,00,000/- (Rs. Two Lakh) with",,, one local surety in the like amount, to the satisfaction of the Investigating Officer concerned, 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.",,

18. 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.,,,

19. 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. Copy dasti.,,,