

(2020) 07 SHI CK 0379

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 967 Of 2020

Gurjeet Singh Kohli

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 8
Code Of Criminal Procedure, 1973 — Section 437(3), 438, 438(2), 446, 446A

Citation : (2020) 07 SHI CK 0379

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Ashok K. Tyagi, Nand Lal Thakur, Ram Lal Thakur

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, who is apprehending imminent arrest on the allegations of corruption, has come up before this Court, seeking anticipatory bail, in FIR No.4/2020, dated 20.5.2020, registered under Sections 7 & 8 of Prevention of Corruption Act, registered in Police Station, SV&ACB Shimla, District Shimla, Himachal Pradesh, disclosing cognizable and non-bailable offences.

2. Mr. Nand Lal Thakur learned Additional Advocate General states that the petitioner had joined investigation.

3. I have heard Mr. Ashok K. Tyagi, learned Advocate for the petitioner and Mr. Nand Lal Thakur, Ld. Additional Advocate General for the State of H.P.

FACTS:

4. For the purpose of deciding this bail, it is sufficient to mention here that the present petitioner is not the main accused, who already stands released on bail.

PREVIOUS CRIMINAL HISTORY

5. The Counsel for the petitioner, on instructions, states that there is no previous criminal history.

SUBMISSIONS:

6. The petitioner is a permanent resident of E-10, New Generation Apartment, Dakoli, Jirakpur Punjab, therefore, his presence can always be secured.

7. Given the above reasoning coupled with the fact that the petitioner had joined investigation, this Court is granting bail to the petitioner, 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 petitioner shall be released on bail in the present case, connected with the FIR mentioned above, on his furnishing a personal bond of INR 10,000/, (INR Ten thousand only), with one surety for INR 10,000 (INR Ten thousand only), 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 petitioner along with the phone number(s), WhatsApp number (if any), email ID (if any), and details of personal bank account(s) (if available).

b) The petitioner 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 petitioner shall not be called before 8 AM and shall be let off before 5 PM.

c) The petitioner shall not be subjected to third-degree treatment, indecent language etc.

d) The petitioner shall not influence, threaten, browbeat, or pressurize the witnesses and the Police officials.

e) The petitioner shall not make any inducement, threat, or promise, directly or indirectly, to the Investigating officer, 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.

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

g) There shall be a presumption of proper service to the petitioner 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.

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

i) In case the petitioner fails 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 petitioner about such Bailable warrants through SMS/ WhatsApp message/ E-Mail.

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

k) In case of Non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes 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 petitioner's failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

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

m) 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 petitioner, and even the concerned trial Court shall be competent to cancel the bail. Otherwise, the bail bonds shall continue to remain in force throughout the trial.

8. In case the petitioner finds 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 petitioner 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.

9. The officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order to the petitioner, in vernacular.

10. On the reverse page of the personal bonds and the officer attesting the personal bonds shall ascertain the identity of the bail-petitioner, through these documents.

11. In Sushila Aggarwal, 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."

12. Consequently, the petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on her/his furnishing bail bonds in the terms described above.

13. 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.

14. 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 petitioner.

15. 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.

16. 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 petitioner and the Learned Advocate General, if they ask for the same.

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