
(2017) 10 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : 1302, 1303, 1304, 1305 of 2017

Hardyal, & Ors.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 24-10-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 439, Section 154 - Special powers of High Court or Court of Session regarding bail - Information in cognizable cases
Indian Penal Code, 1860, Section 435, Section 34, Section 436 - Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees - Acts done by several persons in furtherance of common intention - Mischief by fire or explosive substance with intent to destroy house, etc
Prevention of Damage to Public Property Act, 1984, Section 3 - Mischief causing damage to public property

Citation : (2017) 10 SHI CK 0007

Hon'ble Judges : Sandeep Sharma

Bench : Single Bench

Advocate : Naresh Thakur, Divya Raj Singh, P.M.Negi, M.L.Chauhan

Judgement

1. By way of above captioned bail petitions filed under Section 439 Cr. P.C, prayer has been made on behalf of the petitioners for grant of bail in case FIR No. 59 of 2017, dated 18.9.2017, under Section 435, 436 IPC, read with Section 34 IPC and Section 3 of PDPP Act (Prevention of Damage Public Property) Act, registered at Police Station, Nirmand, District Kullu, Himachal Pradesh.

2. Sequel to orders dated 16th October, 2017, SI Roop Lal, PS. Nirmand, District Kullu, H.P., has come present along with records. Records perused and returned. Mr. M.L.Chauhan, learned Additional Advocate General, has also placed on record status report prepared on the basis of the investigation carried out by the Investigating Agency.

3. Perusal of record/status report suggest that aforesaid FIR came to be

registered against bail petitioners at the behest of complainant namely ASI Joginder Singh, who in his statement recorded under Section 154 of Cr. P.C., alleged that bail petitioners alongwith a mob of approximately 100/150 people caused damage to the Bus bearing No. HP34B-7825 and also to the police booth (gumti).

4. Mr. N.K.Thakur, learned Senior counsel representing the bail petitioners, while inviting attention of this Court to order dated 24.10.2017 passed in Cr.MP(M) Nos.1294 and 1295 of 2017, contended that other coaccused in the above FIR have been already granted pre-arrest bail and as such, bail petitioners also deserve to be released on bail, especially when they are in custody for last more than a month.

5. Mr. M.L.Chauhan, learned Additional Advocate General, while opposing the aforesaid prayer, however, conceded that other coaccused have been already enlarged on pre-arrest bail vide Cr.MP(M) 1294 and 1295 of 2017. Mr. Chauhan, further submitted that as of today, nothing is required to be recovered from the bail petitioners and they can also be released on bail subject to the conditions that they shall make themselves available for investigation as and when required by the Investigating Agency.

6. 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. Petitioner is local resident of the place mentioned in the application and he shall remain available to face the trial and to undergo imprisonment, if any, imposed upon him.

7. 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;
- (viii) reasonable apprehension of the witnesses being influenced; and
- (ix) danger, of course, of justice being thwarted by grant of bail.

8. In view of the aforesaid discussion, petitioners have carved out a case for

grant of bail. Accordingly, the petition is allowed and the petitioners are ordered to be enlarged on bail in the aforesaid FIR, subject to furnishing personal bonds in the sum of Rs.25,000/- each, with one surety each in the like amount to the satisfaction of the JMIC, Ani, District Kullu, with following conditions:

(a) They shall make themselves 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) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) They 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) They shall not leave the territory of India without the prior permission of the Court.

9. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

10. 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 this application alone. All the aforesaid petitions stand accordingly disposed of.

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