

(2019) 10 SHI CK 0101

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1755 Of 2019

Jaswinder Singh @ Goldy

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 23-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 439

Indian Penal Code, 1860 — Section 120B, 201, 212, 307, 323, 324, 326, 396, 412, 452

Evidence Act, 1872 — Section 27

Citation : (2019) 10 SHI CK 0101

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : H.S. Rana, Kamlesh Kumari, Shiv Pal Manhans, Raju Ram Rahi

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 206 of 2018, dated 13.08.2018, under Section 452, 396, 307, 323, 324, 326, 212, 412, 201 and 120B IPC, registered in Police Station Nalagarh, District Solan, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 13.08.2018 police received telephonic information from CHC, Nalagarh, that some persons have been brought there for treatment, as they received injuries in a quarrel. So, a police team rushed to CHC, Nalagarh, and found injured Shri. Bhagat Ram Saini,

Smt. Navjot Saini and Shri Gaurav Saini admitted there. Injured Shri Gaurav Saini got his statement recorded under Section 154 Cr.P.C. where he stated that his younger sister studies in NIIT, Hamirpur, and he used to live with his parents at home. His father used to run Shivalik Senior Secondary Public School, in their own residence. On 12.08.2018 when they were sleeping, at about 3/3:30 a.m., he heard the screams of his parents, so he woke up and saw 4-5 persons, who have draped their faces with clothes, and they caught hold of him and pointed pistol at him. These persons tied him and muffled his face with a piece of cloth. A person, who pointed pistol on him, kept on guarding him and rest of the persons started searched the room. They took his silver bracelet, gold chain and mobile phone. The complainant has further stated that these persons went to the room of his father and asked for money and when his parents asked as to why they are doing so, they injured them with sharp edged weapons and shouted 'tum media mein hamarey khilaaf jayada boltey ho' (you speak much against as in media) and ultimately managed to take his mobile phone, bracelet, gold chain and coins and other valuable articles. Thereafter, the complainant while sitting dragged himself and reached the upper floor and managed to wake up Shri Kapil Thakur and Shri Tarsem, who work in their staff. Shri Kapil Thakur and Shri Tarsem untied him and then he divulged the occurrence to them. Thereafter, they went inside the rooms of his parents and saw his injured parents lying in a pool of blood. The parents of the complainant were rushed to CHC, Nalagarh and police were informed. As per the complainant, his mother was referred to PGI, Chandigarh, and his father was declared dead. Upon the statement of the complainant, police registered a case and the investigation ensued. Police visited the spot, prepared the spot map and clicked photographs. Postmortem was conducted on the dead body of the deceased and the dead body was sent to IGMC, Shimla, for expert forensic opinion and it was opined that the deceased died as a result of gross hemorrhagic shock as a result of multiple gross injuries to head. A forensic team visited the spot to collect scientific samples. Forensic team collected numerous scientific evidence. Police recorded the statements of the witnesses and recovered some valuable articles, including cash from the room of the deceased. During the course of investigation, the CCTV footage of the CCTV camera installed on the first floor of school building revealed that on 13.08.2018, at about 01:40 a.m., the accused persons reached there, through scooty, and at about 02:15 a.m. they cut open the lock of the gate. At about 05:02 a.m. three accused persons were spotted going out with the goods and at about 05:15 a.m. rest of the two accused persons were seen going out. Police also analyzed the dump data of Airtel company and found that both the teams of the accused persons were in contact with each other. Police managed to zero down the mobile numbers which were active at the relevant time there and through them calls were made or received.

Ultimately, mobile No. 8427347078, which was in operation at the time of the occurrence was last found active on 12.08.2018 and its location was found at Khera, which was within the area of Kharuni (the place of occurrence). On the

basis of analysis of mobile dump data, and police records one Gurdev Singh was called by the police for interrogation. During interrogation, he divulged that accused Gurminder Singh, Harpreet @ Happy alongwith his friends, prior to occurrence were made to stay in a gym by him and thereafter he, in his own vehicle, took them out of Nalagarh after the occurrence. On 18.08.2018 Jaswinder Singh @ Goldy (petitioner herein) was arrested and divulged that he accompanied accused Harpreet Singh, Gurminder Singh and Gurdev Singh in a car and they purchased a gas cylinder and a gas cutter. Thereafter, they met a sardar, who also accompanied them.

When they reached near the resident of the complainant, Narender Singh pointed out to Gurminder Singh the residence of the Principal and then they were taken behind the school and exit was shown to them. Narender told to abort the plan as they were less in number, so he went to his home. Thereafter, accused Gurdev took them to a gym went to his home. Thereafter, accused Gurdev took them to a gym where accused Harpreet Singh @ Happy and Grminder Singh stayed and accused Gurdev left to his home. On the subsequent day, accused Harpreet called one Raju and asked for more men and at about 5:5:30 p.m. three more persons came and one of them was being called as Raju by accused Harpreet. They had their dinner and at about 11:11:30 p.m. went towards Baddi in Indica car, scooty and motor cycles. En route accused Gurminder parked the car and after taking out items from it, he sat on the motor cycle. Thereafter, they reached Kharuni Shivalik Science School. The petitioner further disclosed that when he asked accused Harpreet, he told that they will commit theft in Shivalik School and when he refrained, he was threatened and asked to keep a vigil on the road. As per accused Jaswinder, thereafter, accused Harpreet, Gurminder Singh, Raju, Chinda and Gurdass stealthily went inside the premise and after some time accused Gurdev, who was standing on the road, fled away. He remained in a rain shelter, as it was raining and afterwards came, on foot, to a junction from where road diverts to Chandigarh. He telephoned Mandeep and asked to come and take him on motorcycle, but he refused. Police arrested accused Raju Singh on 19.08.2018 and accused Gurdaas Singh @ Pappu on 20.08.2018. On 22.08.2018, accused Amandeep Singh @ Chinda made a disclosure statement to the police and got identified the jungle/bushes and a stone, under which, in a handkerchief, something was kept. On checking, the handkerchief Rs. 1,50,000/- was recovered. On 22.08.2018 accused Raju Singh made disclosure statement and got recovered Rs. 1,72,740/ from his accommodation. Likewise, accused Gurdass Singh got recovered Rs. 1,65,000/-. Police prepared the spot maps of all the places of recovery and recorded the statements of the witnesses. On 23.08.2018 accused Amandeep Singh @ Chinda made a disclosure statement and got recovered a bag, which contained clothes. In addition to this accused persons got recovered various other articles allegedly used in the commission of the offence. They got recovered the vehicles allegedly used in the commission of the offence. On 01.09.2018 accused Gurwinder Singh made a disclosure statement and got recovered Rs. 15,960/-. On 02.09.2018

accused Gurminder Singh made a disclosure statement and got recovered a gas cylinder, regulator, pipe (rubber), a gas cutter, three pistols and a darat. All these articles were taken into possession by the police and the spot maps of the places of recovery were prepared. Accused Gurminder and Harpreet disclosed that when they went to Goa with their wives, they gave the bag containing cash and ornaments to Ravinder Kaur. When she was inquired about the said bag she disclosed that when the police raided her premises she put the same in a bada (cowbarn) and now it has been stolen. Thus, a case under Section 412 IPC was registered against accused Ravinder Kaur. Later on, the petitioner got her statement recorded under Section 27 of the Indian Evidence Act and disclosed that out of the bag she had hidden some money, which she could get recovered. Accused Ravinder Kuar got recovered a polythene bag, which contained Rs. 1,38,000/-. As per the medical examination of the injured Smt. Navjot Kaur (mother of the complainant) injuries sustained by her are life threatening. As per the police, accused Ravinder Kuar intentionally took into possession of the bag containing stolen articles and kept it with her. On 16.02.2019 polygraphy test was conducted on the petitioner, but she is not disclosed the truth. Challan stands presented in the learned Trial Court and on 08.11.2019 the case is listed for evidence. There is anger in the local area qua this crime. Lastly, it is prayed that keeping in view the seriousness of the crime, the manner in which the crime was perpetrated and also the fact that there is anger in the society qua the crime and in the case the petitioner at this stage is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, the present bail application be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, so the petition may be allowed and the petitioner may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner had played active role in the commission of heinous crime. He has further argued that all the accused persons, including the petitioner, with prior concert committed heinous crime and now in case the petitioner, at this stage, is enlarged on bail, there is likelihood that either he may flee from justice or tamper with the prosecution evidence. Lastly, it is prayed that the bail application of the petitioner may be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner cannot be kept behind the bars for an unlimited period, so the application be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the manner in which the alleged offence is perpetrated by the accused persons, including the petitioner, the fact that the petitioner is resident of Punjab and in a position to tamper with the prosecution evidence and flee from justice, considering the gravity and heinousness of the offence, the role of the petitioner in the alleged offence, and also considering the overall material, which has come on record, and without discussing the same at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the petition, which sans merits, deserves dismissal and is accordingly dismissed.