

(2022) 06 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1167, 1169 Of 2022

Jatinder Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-06-2022

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 154, 436, 436A, 439

Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323, 325, 341

Citation : (2022) 06 SHI CK 0038

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : ?Man Singh Chandel, Sudhir Bhatnagar, Sunny Dhatwalia, Neelam Kumar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Since both the petitions arise out of same FIR, same were taken up together for hearing and are being disposed of vide this common judgment.

2. Bail petitioners, namely Jatinder Kumar @ Shanu and Namneet Kumar @ Raman, who are behind the bars since 10.02.2022, have approached this Court in the instant proceedings filed under Section 439 Cr.PC, for grant of regular bail in FIR No. 47, dated 10.02.2022, under Sections 341, 323, 325, 307, 147, 148 & 149 of IPC, registered at Police Station Nalagarh, District Solan, H.P.

3. Pursuant to order dated 27.05.2022, respondent-State has filed status report and SI Neelam Kumar, P.P. Dabhota, P.S. Nalagarh, District Solan, has also come present with record. Record perused and returned. Close scrutiny of status report/record, reveals that on 09.02.2022, at about 9.30 P.M., when complainant reached outside his home on Nalagarh-Bharatgarh road, an Alto Car bearing registration No.HP12M-9542 and a white coloured Scorpio Car were standing

there. Complainant alleged that persons namely Gurjeet, Sunil Kumar alias Shillu and Kaku attacked him as well as his friend Vijay Kumar with dandas, sariyas and darat with an intention to kill him as well as his friend Vijay Kumar. Complainant also alleged that above-named persons also ran over Scorpio vehicle on him, as a consequence of which, he suffered injuries on his left foot/leg. In the aforesaid background, FIR, as detailed hereinabove, came to be lodged against the persons namely Gurjeet Singh, Paramjeet Singh, Bhajan Lal, Jasvinder Pal Singh, Sunil Kumar alias Sillu, Yogesh Kumar and present bail petitioners, i.e. Jatinder Singh and Namneet Kumar. Person namely Yogesh Kumar already stands enlarged on bail vide order dated 11.09.2022, passed by this Court in Cr.MPM No. 763 of 2022, whereas, all other persons including bail petitioners are behind the bars. Since investigation in the case is complete and nothing remains to be recovered from the present bail petitioners, they have approached this Court in the instant proceedings for grant of bail.

4. Mr. Sudhir Thakur, learned Additional Advocate General, while fairly admitting factum with regard to filing of challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioners, but keeping in view the gravity of offences alleged to have been committed by them, they do not deserve any leniency and as such, prayer having been made on their behalf for grant of bail may be rejected. Learned Additional Advocate General, further submits that there is overwhelming evidence adduced on record by the prosecution suggestive of the fact that bail petitioners took active part in the crime and as such, it cannot be said they have have been falsely implicated.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that on 09.02.2022, during the day time, some altercation took place inter se complainant Gurpreet Singh and accused Gurjeet Singh, i.e. brother of Paramjeet Singh and allegedly, complainant Gurpreet Singh slapped Gurjeet Singh. Persons named in the FIR, with a view to take revenge, planned to give beatings to complainant Gurpreet Singh. As per CCTV footage, all the persons named in the FIR, not only gave beatings to complainant Gurpreet Singh and person namely Vijay Kumar, but also attempted to run over their vehicle over the person of complainant namely, Gurpreet Singh. Since, accused Yogesh Kumar was not present on the spot and allegation against him is that he had apprised other accused named in the FIR that complainant Gurpreet Singh has left the place of marriage towards his house, he was ordered to be enlarged on bail by this Court, as has been taken note hereinabove. As per investigation, complainant and his friend Vijay Kumar were given beatings by the accused Namely Gurjeet Singh, Paramjeet Singh, Bhajan Lal, Jasvinder Pal Singh, Sunil Kumar alias Sillu, Yogesh Kumar and present bail petitioners. With a view to prove the complicity of the bail petitioners, much reliance has been placed on CCTV footage and call detail reports, perusal whereof reveals that bail petitioners were in constant touch with accused namely Gurjeet Singh, who wanted to take revenge on account of alleged beatings given to him by the complainant Gurpreet Singh during day

time. As per CCTV footage, all the persons named in the FIR, save and except, Yogesh Kumar, were present at the time of alleged incident and they all gave beatings to complainant Gurpreet Singh and his friend Vijay Kumar. Medical evidence adduced on record reveals that complainant Gurpreet Singh, suffered two simple and one grievous injury, i.e. fracture and his friend Vijay Kumar suffered one simple injury. As per investigation, accused Gurjeet Singh ran over his Alto Car over complainant Gurpreet Singh, as a consequence of which, he suffered injuries on his foot and suffered fracture. Complainant Gurpreet Singh, though was referred to PGI, but he chose to be medically treated in some other hospital, but fact remains that as of now, he is discharged from the hospital and is out of danger. Though, CCTV footage reveals that all the bail petitioners were present on the spot of alleged incident, but there is no specific evidence, if any, with regard to beatings, if any, given by them to complainant Gurpreet Singh and his friend Vijay Kumar. Though, complainant Gurpreet Singh, while recording his statement under Section 154 Cr.P.C claimed that persons named in the FIR, came in vehicle and ran over their vehicle over him as well as his friend, but CCTV footage reveals that accused Gurjeet Singh ran over his Alto car over complainant Gurpreet Singh, as a consequence of which, he suffered fracture. Otherwise also, save and except, two injuries all the other injuries suffered by complainant Gurpreet Singh and his friend Vijay Kumar, are simple. Since bail petitioners never made an attempt to run over vehicle over the persons/body of the complainant and his friend, it would be too premature, at this stage, to conclude that they had an intention to kill the complainant and his friend. Definitely, there is evidence available against the accused Gurjeet Singh in the shape of CCTV footage that he after having hit complainant Gurpreet Singh made an attempt to run over his vehicle over his body. It is also not the case of the prosecution that while vehicle was being ran over on the body of complainant, petitioners herein were sitting in the car, rather it emerge that bail petitioners herein were sitting in another vehicle, i.e. Scorpio. No doubt, bail petitioners herein were carrying weapons in their hands, but as per prosecution, those were snatched by the local people present on the spot before same could be used by the bail petitioners. Since, investigation in the case is complete and challan stands filed in the competent court of law, there appears to be no justification to let bail petitioners incarcerate in jail for indefinite period during trial, especially, when guilt, if any, of them, is yet to be established on record. Apprehension expressed by learned Deputy Advocate General that in the event of bail petitioners being enlarged on bail, they may flee from justice, can be best met by putting them to the stringent conditions. Otherwise also Hon'ble Apex Court as well as this Court have held in catena of judgments, that till the time, guilt of a person is not proved in accordance with law, he/she is deemed to be innocent.

6. 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 categorically 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 is 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:

"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 21 of 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*.

7. 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. 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.

8. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)¹ Supreme Court Cases 49; held as under:-

" 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 can be 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. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted 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 India , 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. Apart from the question of prevention being the object of 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 propose of giving him a taste of imprisonment as a lesson."

9. In *Manoranjana Singh Alias Gupta versus CBI* 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

" This Court in *Sanjay Chandra v. CBI*, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat 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 a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

10. The Hon'ble Apex Court in *Prasanta Kumar Sarkar v. 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;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

11. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, bail petitioners have carved out a case for grant of bail, accordingly, the petitions are allowed and the petitioners are ordered to be enlarged on bail in aforesaid FIR, subject to their furnishing personal bond in the sum of Rs.

50,000/- each with two local sureties, in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, 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.

12. It is clarified that if the petitioners misuse the 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.

13. 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. The petitions stand accordingly disposed of.

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