

(2020) 06 SHI CK 0087

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 753 Of 2020

Mohamad Salim

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 18-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

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

Indian Penal Code, 1860 — Section 120B, 406, 420, 504, 506

Citation : (2020) 06 SHI CK 0087

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : V.S. Chauhan, Ajay Kumar, Sudhir Bhatnagar

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Bail petitioner, Mohamad Salim, who is behind bars for the last seven months has approached this Court in the instant proceedings filed under S.439 CrPC for grant of regular bail in FIR No. 72, dated 3.10.2019, under Ss. 420, 406, 504 and 506 and 120B IPC registered at CID, Police Station, Bharari, Shimla, Himachal Pradesh.

2. Status report filed pursuant to order dated 16.6.2020, reveals that the FIR detailed herein above, came to be registered at the behest of the complainant, Rajiv Ranta, who alleged that in the month of September, 2019, persons namely Wasim Ahmed, Yusuf Pathan and Salim Mohamad (petitioner) purchased 11 trucks of apple boxes (8381 boxes) for total consideration of Rs. 1,11,4,062/-, but till date only a sum of Rs. 61,00,000/- has been remitted in his saving bank account. He alleged that despite repeated requests, all the three persons named herein above are not making balance payment, as such, appropriate action in accordance with be taken against them.

3. Pursuant to filing of the aforesaid FIR, SIT constituted by Government of Himachal Pradesh for recovering the money of the various fruit growers, arrested all the above named persons from the State of Maharashtra. Present bail petitioner is behind the bars since 5.10.2019, whereas, another co-accused, Yusuf Pathan, who was arrested on 6.3.2020, stands enlarged on bail by this Court vide judgment of even date passed in CrMP(M) No. 749 of 2020. Yet another co-accused, Salim Mohamad has also approached this Court vide a separate bail petition, which is pending adjudication before Coordinate Bench of this Court.

4. Mr. Sudhir Bhatnagar, learned Additional Advocate General, while fairly admitting the factum with regard to filing of Challan in the competent Court of law, contends that since a huge sum of Rs. 42,00,000/- remains to be recovered from the bail petitioner and other co-accused, it may not be appropriate to release the bail petitioner at this stage. Learned Additional Advocate General, further contends that since the bail petitioner hails from the state of Maharashtra and he had been evading his arrest, it would be difficult to procure his presence during trial, in the event of being enlarged on bail, as such, present petition may kindly be rejected.

5. Having heard learned counsel for the parties and perused the material available on record, this Court finds that out of Rs.1,11,40,062/-, approximately Rs. 42,00,000/- remains to be paid. Though the complainant has alleged that he had sold 11 trucks of apple boxes to the petitioner and other co-accused for total consideration of Rs.1,11,40,062/-, but such fact is definitely required to be proved in accordance with law before the trial Court. No doubt, perusal of status report reveals that a sum of Rs. 61,00,000/- stands remitted in the saving bank account of the bail petitioner qua the alleged purchase of 11 trucks of apple boxes but since 11 trucks of apple boxes came to be purchased by three different persons, learned counsel for the petitioner is right in contending that one individual cannot be held liable to pay entire amount of consideration. In another bail petition filed by co-accused Yusuf Pathan, being CrMP No. 749 of 2020, it has been fairly admitted by Investigating Officer that complainant, Rajiv Ranta has executed an affidavit as well as receipt to the effect that nothing is payable by co-accused Yusuf Khan, meaning thereby that the sum of Rs.1,11,40,062/- is not only to be paid by bail petitioner, rather by all the three persons, as such, it is incumbent upon the complainant, to specifically plead and prove the extent of liability of the bail petitioner, who has already remitted certain amount in the saving bank account of the complainant. Leaving everything aside, this Court taking= note of nature of transaction, cannot lose sight of the fact that dispute inter se complainant and the bail petitioner is of civil nature, as such, criminal proceedings initiated at the behest of the complainant cannot be used to coerce the bail petitioner to pay amount, which is still disputed.

6. Though the aforesaid aspects of the matter are to be considered and decided by the learned trial Court in the totality of evidence collected on record by the

investigating agency but having taken note of the aforesaid glaring aspects of the matter, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when he has already suffered for more than seven months. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions. Otherwise also, Hon'ble Apex Court and this Court, in a catena of judgments have held that a person is deemed to be innocent, till the time, his/her guilt is proved in accordance with law. Moreover, balance amount, if any, cannot be realized from the bail petitioner by keeping him behind the bars, rather, it would be in the interest of both, complainant and the bail petitioner, that the bail petitioner is enlarged on bail, so that he is able to arrange for the payment of balance, if any.

7. 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 freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held 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*."

8. In *Sanjay Chandra versus Central Bureau of Investigation (2012)*¹ Supreme Court Cases 49, Hon'ble Apex Court has held that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that 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.

9. 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.

10. The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010)* 14 SCC 496, has laid down the various principles to be kept in mind, while deciding petition for bail i.e. prima facie case against the accused, nature and gravity of offence, severity of punishment, likelihood of repeating of the offence by accused etc.

11. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Petitioner is ordered to be enlarged on

bail, subject to furnishing bail bonds in the sum of Rs.10,00,000/- with one local surety in the like amount, to the satisfaction of the Magistrate available at the station, besides the 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.

12. It is clarified that if the petitioner misuses the liberty or violates any of the conditions imposed upon him, 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 petition alone.

The petition stands accordingly disposed of.