

(2020) 08 SHI CK 0075

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1293, 1295, 1296, 1306 Of 2020

Mubeen Ali And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 11-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 436, 436A, 437, 438, 439

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

Citation : (2020) 08 SHI CK 0075

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Kush Sharma, Arvind Sharma

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Since all the above captioned bail petitions arise out of the same FIR, they are being taken up together for disposal vide common judgment. Above

named bail petitioners have approached this Court in the instant proceedings, filed under Section 439 Cr.P.C, praying therein for grant of regular bail in

case FIR No. 78/2020, dated 22.6.2020, under Sections 147, 148, 149, 323, 325, 307 and 341 of IPC, registered at PS Majra, District Sirmour, H.P.

2. Perusal of status report/record filed/produced by the Investigating Agency pursuant to previous order(s) passed by this Court, reveals that on

21.6.2020, complainant namely Avinesh Kumar lodged a complaint with Police Station Majra, District Sirmour, H.P., alleging therein that on 21.6.2020,

his brother Rakesh Kumar had gone for hair cut. At 6:30 pm, person namely Abid Khan picked up a quarrel with him and gave him beatings with

danda. Complainant disclosed to the police that he after having come to know about aforesaid incident rushed to the spot, where he along with his

brother were given beatings by persons namely Abid Khan, Mobin, Shahrukh, Fareed, Firoj, Salman, Salamat, Khalid, Rakib Ali, Aarif Nai and Tajim,

as a consequence of which, he alongwith his brother suffered multiple injuries. Complainant also disclosed to the police that persons named herein

above also gave beatings to his family members namely Dinesh, Saurabh, Sanjay, Manoj, Chaman, Dharmender, Virender and Gaurav etc, who had

come to the spot to rescue them from above named persons. On the basis of aforesaid complaint, FIR detailed herein above, came to be lodged

against the bail petitioners, who are behind the bars since 27.6.2020.

3. Record reveals that all the bail petitioners prior to approaching this Court in the instant proceedings had filed petitions under Section 438 of Cr.P.C,

praying therein for grant of interim bail, but coordinate Bench of this court vide judgment dated 6.7.2020, passed in CrMP(M) Nos. 944 to 952 of 2020,

rejected the prayer made on behalf of the petitioners for grant of anticipatory bail and as such, majority of persons named in the FIR are behind the

bars. Some of the co-accused namely Salamat Ali, Shabir Ahmad, Naseem Ali and Shohin have been ordered to be enlarged on regular bail in the

petitions filed by them under Section 439 Cr.P.C by this Court vide judgments dated 13.7.2020 and 31.7.2020 passed in Cr.MP(M) Nos. 1058, 1059,

1208 and 1209 of 2020, respectively.

4. Mr. Arvind Sharma, learned Additional Advocate General while fairly admitting factum that nothing remains to be recovered from the bail

petitioners contends that in the event of bail petitionersâ?? being enlarged on bail, there is apprehension of breach of peace in the area and as such,

bail application(s) having been filed by the petitioners may be rejected. Mr. Sharma, further contends that there is ample evidence adduced on record

by the Investigating Agency suggestive of the fact that bail petitioners not only gave merciless beatings to the complainant and his other family

members, but also incited the mob, as a consequence of which, dispute arose inter-se two communities. Lastly, Mr. Sharma, contends that since

dispute has arisen inter-se two communities i.e. Muslim and Hindu, it would not be appropriate at this stage to enlarge the bail petitioners on regular

bail, because in the event of their being enlarged on bail, they may not only flee

from justice rather may again indulge in such like activities.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that on 21.6.2020, some

altercation took place between the brother of the complainant and the persons named in the FIR, whereafter allegedly, bail petitioners gave beatings to

the brother of the complainant and his other family members. Record/status report made available to this court clearly reveals that some of persons,

who were not initially named in the FIR, were subsequently roped in the case on the basis of CCTV footage and as such, this Court vide judgments

dated 13.7.2020 and 31.7.2020 passed in Cr.MP(M) Nos. 1058, 1059, 1208 and 1209 of 2020, has already ordered enlargement of those persons on

regular bail, who were not named in the FIR initially by the complainant. Status report reveals that when complainant alongwith his brother was

purchasing some articles in the shop at Gullabghar Chowk, bail petitioner namely Abid Khan picked up quarrel with Rakesh without any reason and

thereafter, started giving him beatings. Precise allegation of the complainant is that above named Abid also called other persons from the neighborhood

through his mobile phone and when complainant's brother made an attempt to run away from the spot to save his life, he was chased and beaten

by the Abid Ali, Salman, Khalid Rakib etc. Complainant though alleged that above named persons not only gave beatings to them, but also to their

family members, who had come to rescue them, but careful perusal of aforesaid judgment dated 6.7.2020, rendered by the coordinate Bench of this

Court reveals that in CCTV camera, persons from both the sides could be seen fighting with each other. Though in the status report, it has been

mentioned that complainant and his other family members sustained multiple injuries on account of beatings given by the bail petitioners, but it stands

duly recorded in the judgment dated 6.7.2020 that some of the accused also suffered injuries in the alleged clash interÂse two groups. As per status

report, brother of the complainant was referred to PGI on account of severe head injury, but subsequently, he was discharged and thereafter he

remained admitted at Dr. Y.S. Parmar Government Medical College, Nahan. Though in the status report filed in the instant proceedings, there is no

detailed discussion, if any, with regard to medical evidence adduced on record by the Investigating Agency with regard to alleged incident, but careful

perusal of paras No. 27 to 29 of the judgment dated 6.7.2020, passed by coordinate Bench of this Court, clearly reveals that save and except persons namely Saurav, who suffered serious head injury, persons from both the sides received simple injuries. Perusal of paras 30 and 31 of the aforesaid judgment further suggests that respondent State as well as petitioners made available video recording of CCTV camera and on viewing both the clippings, court found that alleged incident took place in the broad day light in a chowk in the presence of large number of people, some of which were participants and others were silent spectators. No doubt, as per status report, initially quarrel took place interÂse brother of the complainant and persons named in the FIR, but subsequently many people got involved in the incident and they gave beatings to each other. Earlier bail petitions having been filed by the petitioners under Section 438 of Cr.PC, praying therein for grant of interim bail came to be rejected on the ground that real cause of quarrel is yet to be ascertained coupled with the fact that weapon of offence like rod and sticks were also to be recovered, but at this juncture, nothing remains to be recovered from the bail petitioners as has been fairly admitted by the learned Additional Advocate General. While rejecting anticipatory bails having been filed by the petitioners, coordinate bench of this Court in its judgment dated 6.7.2020 recorded in CrMP(M) Nos. 944 to 952 of 2020 has categorically observed in para 54 of the judgment that in the given facts and circumstances, provisions of Section 438 CrPC, providing anticipatory bail are not available for the petitioners except Khalid, but they may be entitled for regular bail under Section 437 and/or 439 Cr.PC, at this stage and as such, petitioners have approached this Court in the instant proceedings filed under Section 439 CrPC for grant of bail. Since nothing remains to be recovered from the bail petitioners, coupled with the fact that they all are in judicial custody, this Court sees no reason to let the bail petitioners incarcerate in jail for an indefinite period during trial. Brother of the complainant, who allegedly suffered head injury stands discharged from the hospital. Though, Mr. Sharma, while referring to medical evidence made serious attempt to persuade this Court to agree with his contention that injury allegedly inflicted upon the head of the brother of the complainant by the bail petitioners was sufficient to cause death, but having carefully perused status report/record, from where it clearly emerges that though initially quarrel took place between brother of the complainant and bail petitioner Abid

Khan, but subsequently, persons from both the communities got involved and gave beatings to each other, this Court is of the view that at this stage, it would be premature to conclude complicity, if any, of the bail petitioners in the case as far as commission of offence under Section 307 of IPC is

concerned. Since brother of the complainant after having recovered from head injury stands discharged from the hospital and nothing remains to be recovered from the bail petitioners, this Court sees no reason to curtail the freedom of bail petitioners for indefinite period during trial.

6. Though learned Additional Advocate General on instructions contends that investigating agency is in process of filing challan shortly, but this Court cannot lose sight of the fact that trial in the case is likely to be delayed on account of COVID-19, and as such, there is no justification to keep the bail petitioners behind bars for indefinite period during trial. Apprehension expressed by the learned Additional Advocate General that in the event of petitioners being enlarged on bail, they may flee from justice and indulge in such like activities again, can be best met by putting them to stringent conditions as has been fairly stated by the learned counsel for the petitioner.

7. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence to be collected on record by the investigating agency, but having noticed aforesaid aspects of the matter, this Court sees no reason to keep the bail petitioners behind the bars for indefinite period during trial, especially when, guilt, if any, of the bail petitioners is yet to be ascertained/ established in accordance with law by the Investigating Agency by leading cogent and convincing evidence.

8. 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.

9. The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of

Investigation (2012)¹ Supreme Court Cases 49; held as under:Â?

â?? 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,

â??necessityâ? 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.â??

10. In Manoranjana Singh Alias Gupta versus CBI 2017 (5) SCC 218, The Honâ??ble Apex Court has held as under:Â?

â?? 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.â??

11. The Honâ??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.

12. Reliance is placed on judgment passed by the Honâ??ble Apex Court in case titled *Umarmia Alias Mamumia v. State of Gujarat*, (2017) 2 SCC

731, relevant para whereof has been reproduced herein below:â??

â??11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the

right guaranteed to an accused under Article 21 of the Constitution of India. (See: *Supreme Court Legal Aid Committee v. Union of India*, (1994) 6

SCC 731; *Shaheen Welfare Assn. v. Union of India*, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the

ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: Paramjit Singh

v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569).

13. Recently, the Honâ??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. Honâ??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. Honâ??ble Apex Court 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:

â??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*.

14. Consequently, in view of the aforesaid discussion as well as law laid down by the Honâ??ble Apex Court, the 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 bonds in the sum of Rs. 1,00,000/Â each with one local surety each 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 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.
- e. They shall handover the passports to the Investigating Agency within a period of ten days from their release on bail.

15. 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.

16. Any observations made hereinabove shall not be construed to be a reflection on the merits of the cases and shall remain confined to the disposal of these applications alone. The bail petitions stand disposed of accordingly.

Dasti on usual terms.