

(2020) 12 SHI CK 0222

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.2273 Of 2020

Narender Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 31-12-2020

Acts Referred:

Indian Penal Code, 1860 — Section 376, 506
Information Technology Act, 2000 — Section 66E
Code Of Criminal Procedure, 1973 — Section 437A, 446, 446A

Citation : (2020) 12 SHI CK 0222

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Rajesh Kumar Parmar, S.C. Sharma, Nand Lal Thakur

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. A soldier in Indian army aged 24 years, who is in custody for committing forcible sexual intercourse, threat and recording the obscene acts with a

lady, when on leave, has come up before this Court seeking regular bail.

2. The police arrested the petitioner on 27.12.2020 in FIR No.42 of 2020, dated 26.12.2020, registered under Sections 376, 506, IPC and Section 66E,

IT Act in Women Police Station, Solan, Himachal Pradesh, disclosing cognizable and non-bailable offences.

3. Briefly stated the facts of the case are that the victim, who is aged 34 years and a married lady informed the Superintendent of Police against the accused Narender Singh. The allegations against the petitioner are:-

(i) That the victim is a married lady and has two children. However, her husband resides separately from them.

(ii) The accused kept on calling her on her mobile number.

(iii) In August, 2018, the accused visited her home and conveyed his intention to marry and requested her to search a girl for him. She asked him to

leave his house, but instead of leaving her house, he started indulging in obscene acts with her and made physical relations with her against her wishes.

After that, the accused threatened the victim that in case she informed anyone about this incident of forcible act, then he would kill her and her children.

(iv) After that, on a number of times, he visited the house of the victim and established forcible physical relations with her against her wishes and

consent. The accused also established unnatural sexual relations with her. The accused also blackmailed her and obtained various loans in her name.

He kept on taking money from her and also established physical relations with her by putting her under fear. He also threatened her in case she

revealed the fact of having sexual relations to anyone, then he would inform her husband about the same.

(v) The victim also made detailed allegations against the accused, which are not relevant to decide the present bail petition.

4. I have gone through the status report and heard learned counsel for the parties.

ANALYSIS AND REASONING:

5. In *Gurbaksh Singh Sibbia and others v. State of Punjab*, 1980 (2) SCC 565, (Para 30), a Constitutional bench of Supreme Court held that the bail

decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In *Kalyan Chandra Sarkar v. Rajesh*

Ranjan @ Pappu Yadav, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons accused of non-bailable offences

are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence

of a prima facie case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The

rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing

requires, and a change in the fact situation. In *State of Rajasthan, Jaipur v. Balchand*, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably

illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or

thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who

seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of

justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In *Gudikanti Narasimhulu v. Public*

Prosecutor, High Court of Andhra Pradesh, (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours

release unless countered by the negative criteria necessitating that course. In *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22, (Para 6),

Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is

unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict

as to be incapable of compliance, thereby making the grant of bail illusory.

6. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a

crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s)

and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused,

society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in

the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

7. Given the age and conduct of the victim and fact that she was in continuous relationship with the accused from July, 2018, there is no justification in

keeping the petitioner in jail.

8. An analysis of entire evidence does not justify incarceration of the accused, nor is going to achieve any significant purpose. Without commenting on

the merits of the case, the stage of the investigation and the period of incarceration already undergone would make out a case for bail.

9. The possibility of the accused influencing the course of the investigation,

tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative conditions and stringent conditions. In *Sushila Aggarwal*, (2020) 5 SCC 1, Para 92, the Constitutional bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

10. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. Following the decision of this Court in *Manish Lal Shrivastava v. State of Himachal Pradesh*, Cr.MP(M) No. 1734 of 2020, decided on 1st Dec

2020, the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty five thousand (INR

25,000/-), and shall either furnish two sureties each of a similar amount, both of whom, in case of default from putting in an appearance, can produce

the accused before the Court to the satisfaction of the Judicial Magistrate, Solan/ Chief Judicial Magistrate, District Solan, HP/ or any other Judicial

magistrate of District Solan, HP or the aforesaid personal bond and fixed deposit(s) for Rs. Twenty five thousand only (INR 25,000/-), made in favour

of â??Chief Judicial Magistrate, District Solan, H.P.â?, from any of the banks where the stake of the State is more than 50%, or any of the stable

private banks, e.g., HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest

reverting to the linked account. The arresting officer shall give a time of ten working days to enable the accused to prepare a fixed deposit. Such a

fixed deposit need not necessarily be made from the account of the petitioner. If such a fixed deposit is made on paper, then the original receipt shall

be handed over to the arresting officer. If made online, then its printout, attested by any Advocate, and if possible countersigned by the accused, shall

be filed, and the depositor shall get the online liquidation disabled. The petitioner or his Advocate shall inform at the earliest, either by e-mail or by

post/courier, the concerned branch of the bank about the fixed deposit, whether made on paper or in any other mode, along with its number as well as

FIR number, that it has been tendered as surety. After that he shall hand over such proof along with endorsement to the Investigator. It shall be total

discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed

deposit with surety bonds and vice-versa. Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest

credited, if any, shall be endorsed/returned to the depositor(s). Such Court shall have a lien over the FD up to the expiry of the period mentioned under

S. 437-A CrPC, 1973, or as the case may be. The furnishing of the personal bonds shall be deemed acceptance of the following and all other

stipulations, terms, and conditions of this bail order:

a) The petitioner to give security to the concerned Court(s) for attendance. Once the trial begins, the petitioner shall not, in any manner, try to delay

the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall

attend the trial on each date, unless exempted, and in case of appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.

b) The attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioner along with the phone number(s),

WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

c) The petitioner shall join investigation as and when called by the Investigating Officer or any Superior Officer. Whenever the investigation takes

place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5

PM. The petitioner shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.

d) The petitioner shall cooperate with the investigation at all further stages as may be required, and in the event of failure to do so, it will be open for

the prosecution to seek cancellation of the bail granted by the present order.

e) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police

officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to

tamper with the evidence.

f) Once the trial begins, the petitioner shall not in any manner try to delay the trial. The petitioner undertakes to appear before the concerned Court, on

the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted.

g) In addition to standard modes of processing service of summons, the concerned Court may serve the accused through E- Mail (if any), and any

instant messaging service such as WhatsApp, etc. (if any). [Honâ??ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo

Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020].

h) The concerned Court may also inform the accused about the issuance of bailable and non-bailable warrants through the modes mentioned above.

i) In the first instance, the Court shall issue summons and may send such summons through SMS/ WhatsApp message/ E-Mail.

j) In case the petitioner fails to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the

accused to know the date, the Court may, if it so desires, also inform the petitioner about such Bailable Warrants through SMS/ WhatsApp message/

E-Mail.

k) Finally, if the petitioner still fails to put in an appearance, then the concerned Court may issue Non-Bailable Warrants to procure the petitioner's

presence and send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

l) In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal

amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after

forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse the State shall

entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that

the expenditure incurred must be spent to trace the petitioner alone and it relates to the exercise undertaken solely to arrest the petitioner in that FIR,

and during that voyage, the Police had not gone for any other purpose/function what so ever.

m) The petitioner shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within

thirty days from such modification, to the Police Station of this FIR, and also to

the concerned Court.

n) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the

petitioner. Otherwise, the bail bonds shall continue to remain in force throughout the trial and also after that in terms of Section 437-A of the CrPC.

o) It is further clarified that he shall not stalk or harass or follow the victim and in case he does so, then on this ground alone, the protection shall be

cancelled ipso facto.

12. The learned Counsel representing the accused and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all

conditions of this bail order to the petitioner, in vernacular and if not feasible, in Hindi or English.

13. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for

modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even before the Court taking

cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

14. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation in accordance

with law.

15 Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

16. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the

victim, at the earliest. In case the victim notices stalking or any violation of this order, she may either inform the SHO of the concerned Police Station

or write to the Trial Court or even to this Court.

17. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

The petition stands allowed in the terms mentioned above.

Authenticated copy.