

(2023) 05 SHI CK 0225

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 943, 944, 1283 Of 2023

Naresh Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 436, 436A, 439
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 15, 29, 37
Motor Vehicles Act, 1988 — Section 181, 191

Citation : (2023) 05 SHI CK 0225

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : N.S. Chandel, Vinod Gupta, Ashok Kumar, Rajan Kahol, Vishal Panwar, B.C. Verma, Rahul Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Above named bail petitioners namely Naresh Kumar, Jagar Nath and Ram Payara, who are behind the bars for the last two months, have approached this Court in the instant proceedings filed under Section 439 Cr.P.C, for grant of regular bail in case FIR No. 109 of 2023, dated 6.4.2023, under Sections 15 & 29 of ND&PS Act and Sections 181 and 191 of Motor Vehicle Act, registered at Police Station Nalagarh, District Solan, H.P.

2. Pursuant to notices issued in the instant bail petitions, respondent-State has filed status report and ASI Vijay, PP Nalagarh, District Solan, H.P., has come present alongwith the records. Records perused and returned.

3. Close scrutiny of the status report/record reveals that on 6.4.2023, police after having received secrete information that bail petitioners travelling in car bearing registration No. HP 12J-9561, are carrying/transporting narcotics i.e.

poppy husk, laid Naka and stopped the aforesaid vehicle for search. Since persons sitting in the vehicle got perplexed, police after having associated the independent witnesses, conducted their search and allegedly, recovered 4.897 kgs of poppy husk from the bag kept below front seat of the vehicle. Since no plausible explanation came to be rendered on record qua the possession of the aforesaid quantity of contraband, police after having completed necessary codal formalities lodged FIR detailed herein above and since then, bail petitioners are behind the bars. Since investigation in the cases is complete and nothing remains to be recovered from the bail petitioners, they have approached this Court for grant of regular bail.

4. Mr. B.C. Verma, learned Additional Advocate General, while fairly acknowledging the 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 the offence alleged to have been committed by the bail petitioners, they do not deserve any leniency and their prayer for grant of bail, deserves outright rejection.

5. Having heard the learned counsel representing the parties and perused material available on record, this court finds that intermediate quantity of contraband i.e. 4.897 kg of poppy husk, came to be recovered from the conscious possession of the bail petitioners in the presence of the independent witnesses and as such, this Court is not persuaded to agree with learned counsel for the petitioners that bail petitioners have been falsely implicated, however, having taken note of the fact that guilt, if any, of the bail petitioners is yet to be established on record by leading cogent and convincing evidence coupled with the fact that intermediate quantity of contraband came to be recovered from the possession of the bail petitioners, this Court sees no reason to refuse the prayer made for grant of regular bail. Moreover, rigours of Section 37 are not attracted in view of recovery of intermediate quantity of contraband.

6. Since challan stands filed in the competent court of law and considerable time is likely to be consumed in the conclusion of trial, there appears to be no reason for this Court to let the bail petitioners incarcerate in jail for an indefinite period. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law. In the case at hand also, guilt, if any, of the accused is yet to be proved in accordance with law, by leading cogent and convincing material on record. Apprehension expressed by the learned Additional Advocate General that in the event of petitioner's being enlarged on bail, they may flee from justice, can be best met by putting the bail petitioners to stringent conditions as has been fairly stated by the learned counsel for the petitioners.

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. Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)¹ Supreme Court Cases 49 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. In Manoranjana Singh alias Gupta versus CBI, (2017) 5 SCC 218, Hon'ble Apex Court has held that the 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 various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

11. 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 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*.

12. In view of above, bail petitioners have carved out a case for themselves, as such, present petitions are allowed. Bail petitioners are ordered to be enlarged on bail, subject to their furnishing bail bonds in the sum of Rs.50,000 each with two local sureties in the like amount each, to the satisfaction of the learned trial

Court, besides the 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.

13. 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.

14. 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 these petitions alone. The petitions stand accordingly disposed of.

A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioners and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.