
(2017) 04 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : 412 of 2017

Navneet Singh & others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#) - Direction for grant of bail to person apprehending arrest
[Indian Penal Code, 1860](#), [Section 323](#),
[Section 506](#), [Section 436](#) -
Punishment for voluntarily causing hurt - Punishment for criminal ,intimidation -
Mischief by fire or explosive substance with intent to destroy house, etc

Citation : (2017) 04 SHI CK 0023

Hon'ble Judges : Sanjay Karol

Bench : Single Bench

Advocate : Surender K. Sharma, R.S. Verma, M.L. Chauhan

Judgement

1. ASI Tulsi Das, Police Station, Barotiwala, Tehsil Baddi, District Solan, H.P., is present alongwith record. Record perused and returned.
2. F.I.R. No48/17, was registered at Police Station, Barotiwala, Tehsil Baddi, District Solan, H.P. on 29.03.2017, under the provisions of Sections 436, 323 & 506 of the Indian Penal Code. Apprehending arrest, petitioners approached this Court, seeking bail under the provisions of Section 438 of the Code of Criminal Procedure. On 31.03.2017 this Court passed an interim order, directing that in the event of arrest, petitioners shall be enlarged on bail, subject to their complying with the conditions imposed therein. The said interim order is in operation till date.
3. Under instructions, received from ASI Tulsi Das, Police Station, Barotiwala, Tehsil Baddi, District Solan, H.P., who is present in Court, it is submitted by Mr. R. S. Verma, learned Additional Advocate General that petitioners have fully cooperated during investigation. Investigation is complete and custody of the petitioners is not required.

4. Having perused the record as also heard the learned counsel for the parties, I am of the considered view that prima facie petitioners have made out a case for grant of bail. Their custodial interrogation is not required at all.

5. This Court has taken into account the nature of accusation, the severity of punishment in case of conviction and the material so far collected by the prosecution during investigation. I am of the considered view that there is no apprehension made out by the State that in the event of the petitioners being enlarged on bail, they would tamper with the witnesses or extend any threats to the complainant. There is no probability of the petitioners abusing their liberty nor would they interfere or in any manner impede with the course of justice. Petitioners are also not likely to flee from justice. They, through their learned counsel, undertake to make themselves available during the course of investigation, if required, as also during trial, if any.

6. Law with regard to grant of bail is now well settled. The Apex Court in *Siddharam Satlingappa Mhetre versus State of Maharashtra and others*, (2011) 1 SCC 694, while relying upon its decision rendered by its Constitution Bench in *Gurbaksh Singh Sibbia vs. State of Punjab*, (1980) 2 SCC 565, laid down the following parameters for grant of bail:-

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia's* case (*supra*) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of approaching the superior court against the court of Sessions or the High Court is always available."

(Emphasis supplied)

7. The view stands reiterated by the apex Court in Sanjay Chandra versus Central Bureau of Investigation, (2012) 1 SCC 40.

8. Apex Court in Prasanta Kumar Sarkar versus 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.

9. Having taken into consideration the overall attending circumstances, the petitioners have been able to show that there is reason to believe that the threat of arrest is imminent.

10. For all the aforesaid reasons, the interim order dated 31.03.2017 is made absolute. The petitioners shall be on bail till such time challan is presented in the Court for trial where after they shall approach the Court for regular bail, in accordance with law. Needless to add, during this period petitioners shall fully comply with all the statutory conditions laid down under the provisions of Section 438 of the Cr.P.C. As a matter of abundant caution, it is clarified that petitioners shall neither tamper with the evidence nor try to influence the witnesses. They shall make themselves available for investigation as and when required by the investigating officer. They shall not leave the country without the prior permission of the Court.

11. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above. With the aforesaid observations, present petition stands disposed of.

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