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(2024) 05 SHI CK 0059

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 792, 798, 799, 808, 823, 861, 868 Of 2024

Neelam Kumar And Others APPELLANT

Vs

State Of Himachal Pradesh RESPONDENT

Date of Decision : 10-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 420
Himachal Pradesh Protection Of Interests Of Depositors (In Financial Establishments) Act, 1999 — Section 5
Banning Of Unregulated Deposit Schemes Act, 2019 — Section 21, 23

Citation : (2024) 05 SHI CK 0059

Hon'ble Judges : Sushil Kukreja, J

Bench : Single Bench

Advocate : Rajesh Kumar Mandhotra, Kanta Thakur, Vinod Chauhan, Aanchal Singh, Digvijay Singh Thakur, Saurabh Ahluwalia, Abhinav Purohit, Anand Sharma, Rajinder Thakur, Shubham Sood, Farukh Abdullah, Ashwani K. Sharma, Rajani Kumari, Navlesh Verma, Balvinder Singh

Final Decision : Allowed

Judgement

Sushil Kukreja, J

1. Since all these petitions arise out of FIR No. 120/2023 dated 24.09.2023, they have been heard together and are being disposed of by this common order.

2. By way of instant petitions, filed under Section 438 of the Criminal Procedure Code, the petitioners, in the event of their arrest, are seeking bail in case FIR No. 120/2023, dated 24.09.2023, registered at Police Station Palampur, District Kangra, H.P., under Sections 420, 120-B of the Indian Penal Code (hereinafter referred to as “IPC”), read with Section 5 of the Himachal Pradesh Protection of Interests of Depositors (In Financial Establishments) Act, 1999 and Sections 21 & 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

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3. The prosecution story, as per the status report, in brief, is that on 24.09.2023, a complaint was received at Police Station Palampur, District Kangra, H.P. against accused Subhash Sharma, Hemraj, Sukhdev Thakur, Abhishek Sharma and Milan Garg, wherein, it was stated that many persons had invested their money through website www.voscrow.io on the advice of the above named accused persons. The owners of the website were accused Subhash Sharma and Milan Garg. In exchange for the investment, the virtual currency was given to the persons on the website. However, accused Subhash Sharma, promoter Sukhdev Thakur and Abhishek Sharma had cheated the general public through websites Voscrow & Hypenext, as in the year 2019-2020, the above named persons kept on promising to double the person’s invested money, which continued till the year 2021. During this period, some persons received return on the funds invested by them and many persons followed and made investments in the scheme, but after 25th December, 2021, allocation of fund/return was stopped by accused Subhash Sharma. Subsequently, he assured the persons that they would start the distribution of return soon and announced a tie up with the Hypenext Company, which was owned by accused Milan Garg. Thereafter, he started asking persons to invest in Hypenext and many persons trusted his words and invested again. During that period, some people got return on their investments, which continued till the year 2022. However, later on, accused Subhash Sharma informed that the company could not make the returns due to some technical problems and asked for some time to start the payment again. The accused persons again acknowledged the pending refund of 18 Crores and assured to activate ID’s on Aglobal.IO by 08.08.2023. However, till date the persons did not receive any return on their investment in the scheme. As per the complainant, the accused persons in connivance with one another and by developing fake websites and by showing fake coins, have embezzled huge amount. After the registration of FIR the investigation commenced and during the course of investigation, petitioners filed the instant petition seeking pre-arrest bail and this Court vide orders passed on different dates, granted interim bail to the petitioners.

4. The bail applications have been filed by the petitioners on the ground that they are innocent and have been falsely implicated in the present case. Learned counsel for the petitioners contended that the investigation in the case qua the petitioners is complete and no recovery is to be effected from them. They further contended that since the investigation qua the petitioners is complete and their custodial interrogation is not required, therefore, no fruitful purpose will be served by sending them behind the bars for an unlimited period, as trial is not going to be completed in near future.

5. Conversely, the learned Additional Advocate General submitted that the petitioners do not deserve to be released on bail as they have been found involved in a serious economic offence of huge magnitude, so at this stage, in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice.

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6. I have given my considered thought to the rival contentions raised and also gone through the police file as well as the status report filed by the prosecution. The perusal of the record reveals that the investigation qua the petitioners is complete. It has been held by the Hon'ble Supreme Court in a catena of judgments that the fundamental postulate of criminal jurisprudence is the presumption of innocence as a person is believed to be innocent until found guilty. The grant of bail is the general rule while putting a person in jail is an exception. In Satender Kumar Antil vs. Central Bureau of Investigation & Another, (2022) 10 SCC 51, it has been held as under:-

"12. The principle that bail is the rule and jail is the exception has been well recognized through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India.

… … … … … … … …

14. Innocence of a person accused of an offence is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.

15. Presumption of innocence has been acknowledged throughout the world. Article 14(2) of the International Covenant on Civil and Political Rights, 1966 and Article 11 of the Universal Declaration of Human Rights acknowledge the presumption of innocence, as a cardinal principle of law, until the individual is proven guilty.

… … … … … … … …

90. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down inthe following judgments, will govern the field:-

91. P. Chidambaram v. Directorate of Enforcement:

23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the

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same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied.

In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

7. A perusal of the abovementioned judgment indicates that even if the allegation is one of the grave economic offence, it is not a rule that the bail should be denied in every case. The object of bail is neither punitive nor preventive, but to secure the presence of the accused at the trial. The person who has not been convicted should be held in custody pending trial only to ensure his attendance at trial; and to ensure that the evidence is not tampered with and the witnesses are not threatened. If there is no apprehension of interference in administration of justice in a criminal trial by an accused then, he should not be deprived of his liberty. Only a vague belief that he will tamper with evidence and flee from justice cannot be a ground to deprive a person of his liberty.

8. In the case on hand, the petitioners/accused are on interim bail. This court is conscious of the fact that they are allegedly involved in the commission of economic offences. But at the same time, this court cannot lose sight of the fact that the investigating agency has already completed investigation qua them and their custodial is not required as per the status report filed by the Investigating Agency. In the status report it has been averred that after the investigation, initially charge sheets were meticulously crafted against three key individuals- Hemraj, Sukhdev and Abhishek on November 30, 2023. Subsequently, a supplementary chargesheet was prepared, unveiling the involvement of sixteen additional individuals, i.e., Radhika Sharma, Amit Pradeep Singh, Dig Vijender Singh, Kewal Singh, Paras Ram Sen, Sanjay Kumar, Govind Goswami, Naresh

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Kumar, Gurdeep, Neel Dheeman, Sunil Kumar Chandrani, Ram Kumar Rana, Balbir Singh, Krishan Dutt, Jyoti and Vijay Kumar on 19.12.2023. Additionally, another supplementary chargesheet was meticulously prepared, unveiling the involvement of Praveen Kumar on 22.03.2024. It has also been averred in the status report that the investigation against the petitioners is complete and their further custody is not required.

9. As observed earlier, admittedly the investigation in the case qua the petitioners is complete and their custodial interrogation is not required. The evidence is mainly documentary in nature and all the relevant documents are within the custody of the prosecution, therefore, there is no likelihood of tampering of evidence by the petitioners. The prosecution has failed to produce any material on record to suggest that the petitioners will abscond and flee from justice, if enlarged on bail. The petitioners have deep roots in the society and they are permanent residents of the State of Himachal Pradesh

10. Hence, after going through the material available on record and considering the overall facts and circumstances of the case, this Court finds that the present is a fit case where judicial discretion to admit the petitioners on bail is required to be exercised in their favour. The apprehension expressed by the investigating agency can be safeguarded by imposing certain stringent conditions that will meet the ends of justice. Accordingly, all the bail applications are allowed and it is ordered that the petitioners, in the event of their arrest, in case FIR No. 120/2023, dated 24.09.2023, registered at Police Station Palampur, District Kangra, H.P. under Sections 420, 120-B of IPC, read with Section 5 of the Himachal Pradesh Protection of Interests of Depositors (in Financial Establishments) Act, 1999 and Sections 21 & 23 of the Banning of Unregulated Deposit Schemes Act, 2019, shall be forthwith released on bail, subject to their furnishing personal bond to the tune of Rs. 5,00,000/- (Rupees five lacs) each, with two sureties (each) in the like amount, to the satisfaction of the Investigating Officer. This bail order is subject, however, to the following conditions:-

"(i) that the petitioners will appear before the Court and the Investigating Officer whenever required;

(ii) that they will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing any facts to the Court or the police;

(iii) that they will not indulge in the business of sale/purchase of crypto currency;

(iv) that they will not transfer, alienate or encumber their movable and immovable property, if any;

(v) that they will not tamper with the prosecution evidence nor they will try to win over the Prosecution witnesses or terrorise them in any manner;

(vi) that they will not deliberately and intentionally act in a manner which may

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tend to delay the investigation or the trial of the case; &

(vii) that they will not leave India without prior permission of the Court and they shall deposit their passports with the SHO, Cyber Crime Police Station, Northern Range, Dharamshala, District Kangra, H.P., if not seized by the police.”

11. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioners.

12. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

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