

(2022) 01 SHI CK 0042

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 61 Of 2022

Nisha Thakur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 13-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 467, 471
Prevention Of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2022) 01 SHI CK 0042

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Kanta Thakur, Arvind Sharma, Narender Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Sequel to order dated 10.1.2022, whereby the petitioner was ordered to be enlarged on interim bail in connection with FIR No. 3/2021 dated

23.11.2021, under Sections 420, 467, 471, 409 and 120-B of the IPC and Section 13 (2) and 13 (1) d of the Prevention of Corruption Act, registered

with Police Station SV&ACB Solan, District Solan, H.P., respondent-State has placed on record the status report. Insp. Ravinder Kumar, PS

SV&ACB Solan, H.P., has also come present with the records. Records perused and returned.

2. Mr. Arvind Sharma, learned Additional Advocate General, on instructions, fairly states that pursuant to order dated 10.1.2022 passed by this Court,

present bail petitioner has joined the investigation and as of now, nothing remains to be recovered from her. Mr. Sharma, on instructions, also states

that her custodial interrogation is not required at this stage and as such State

has no objection, in case the petitioner is ordered to be enlarged on bail subject to condition that she shall always make herself available as and when required by the Investigating Agency.

3. 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.

4. The Honâ??ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)¹ Supreme Court Cases 49; held as under:-

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??

5. 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.

6. 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.

7. Consequently, in view of the above, order dated 10.1.2022, passed by this Court, is made absolute, subject to the following conditions:

a. She shall make herself 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. She shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c. She shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or the Police Officer; and

d. She shall not leave the territory of India without the prior permission of the Court.

8. It is clarified that if the petitioner misuses her liberty or violates any of the conditions imposed upon her, the investigating agency shall be free to move this Court for cancellation of the bail.

9. 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 this application alone.

The bail petition stands accordingly disposed of.

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