

(2021) 03 SHI CK 0159

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 462, 463 Of 2021

Pankaj And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 22-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 154, 161, 436, 436A, 439

Indian Penal Code, 1860 — Section 34, 201, 307, 342, 436, 452, 506

Citation : (2021) 03 SHI CK 0159

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Vivek Chandel, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur, Svaneel Jaswal

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. By way of above captioned petitions filed under Section 439 of Cr.PC, prayer has been made on behalf of the petitioners, for grant of regular bail in case FIR No. 10 of 2021 dated 10.2.2021, under Sections 452, 342, 436, 307, 506, 201 read with Section 34 of IPC, registered at P.S. Kotkhai, District Shimla, H.P. ASI Ram Singh, P.S. Kothai, is present with records. Record perused and returned.

2. Record/status filed by the respondent-State, reveals that on 10.2.2021, complainant namely Pinki, got her statement recorded under Section 154 Cr.PC, at PS Kothkai, H.P., stating therein that she has been working as part time sweeper at PNB, Kotkhai since 2013 and has been residing in room taken on rent in the building of Sh. Joginder Lal Sood alongwith her son and daughter. She alleged that on 9.2.2020, her husband namely Narian Dass, had come to her quarter from Village Chiva and they after having their meals had gone to sleep, but at 3:30am, she noticed fire on the door of her room. Besides above, complainant also alleged that she heard noise of footsteps of some persons and

as such, she cried and made all other family members wake up. Complainant disclosed to the police that her husband made them to evacuate from house from the ventilator of toilet. In the aforesaid incident, complainant and other family members suffered burn injuries and as such, they were referred to IGMC Shimla. Complainant alleged that on 8.2.2020, at 2:00pm she had some altercation with bail petitioners, who extended threats to kill her. Complainant claimed before the police that she has suspicion that above named persons made an attempt to kill her by setting her room on fire. In the aforesaid background, FIR detailed herein above, came to be lodged against the bail petitioners on 10.2.2021, and since then, they are behind the bars. Though investigation is almost complete, but challan is yet to be filed in the competent court of law and as such, petitioners have approached this Court in the instant proceedings for grant of regular bail.

3. Mr. Kunal Thakur, learned Deputy Advocate General, while fairly admitting factum with regard to completion of investigation contends that challan is yet to be filed and there is overwhelming evidence adduced on record suggestive of the fact that both the petitioners in connivance with each other, made an attempt to set the house of the petitioner on fire and as such, prayer made on their behalf for grant of bail deserves outright rejection. While referring to the statement of the complainant under Section 161 Cr.PC, Mr. Thakur, contends that since on 8.2.2021, some altercation took place inter-se bail petitioners and the complainant on account to phone calls allegedly given by the bail petitioners to the daughter of the complainant, motive to burn the house of the complainant duly stands established. Lastly, learned Deputy Advocate General contends that in the event of petitioners being enlarged on bail, they may not only flee from justice, rather may cause harm to the complainant and as such, it would not be in the interest of justice to grant the bail to the petitioners.

4. Having heard learned counsel for the parties and perused material available on record, this Court finds that though some altercation took place on 8.2.2020, between bail petitioners and the complainant, whereby allegedly, bail petitioners had extended threats to kill her, but there is nothing on record suggestive of the fact that on 8.2.2021, complainant lodged complaint, if any, in the police station qua the alleged threats issued by the bail petitioners. Similarly, this court finds that case has been registered against the bail petitioners on the suspicion raised by the complainant and it has been mentioned in the status report that both the petitioners were seen in CCTV camera. However, report of FSL, if perused, clearly reveals that nothing substantial could be seen in the CCTV camera installed near the building, which was alleged to be set on fire. Even otherwise, after having perused statement of the complainant, this Court finds that motive attributed to the petitioners for commission of alleged offense is too bleak to conclude complicity, if any, of the bail petitioners in the alleged crime. Since investigation in the case is complete and nothing remains to be recovered from the bail petitioners, there appears to be no justification to keep the bail petitioners behind the bars for an indefinite period during trial.

5. Though aforesaid aspects of the matter are to be considered and decided by the court below on the basis of totality of evidence collected on record by the Investigating Agency, but having noticed aforesaid glaring aspects of the matter coupled with the fact that nothing remains to be recovered from the bail petitioners, there appears to be no justification to let the bail petitioners incarcerate in jail for an indefinite period during trial. 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 of his/her is not proved in accordance with law. In the case at hand, guilt if any of the bail petitioners is yet to be established on record by the Investigating Agency by leading cogent and convincing evidence and as such, their freedom cannot be curtailed for an indefinite period during trial. Apprehension expressed by the learned Additional Advocate General that in the event of petitioners 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 petitioner.

6. Recently, the 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 has 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*.

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

" 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, "necessity" 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 purpose of giving him a taste of imprisonment as a lesson."

9. In *Manoranjana Singh Alias Gupta versus CBI* 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

" This Court in *Sanjay Chandra v. CBI*, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat 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 a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

10. The Hon'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.

11. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioners have carved out a case for grant of bail, accordingly, the petitions are allowed and the petitioners are ordered to be enlarged on bail in aforesaid FIR, subject to their furnishing personal bond in the sum of Rs. 1,00,000/- each with one local surety in the like amount to the satisfaction of learned trial Court, with 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 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.

12. It is clarified that if the petitioners misuse their 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.

13. Any observations made hereinabove shall not be construed to be a reflection on the merits of the cases and shall remain confined to the disposal of these applications alone.

The bail petitions stand disposed of accordingly.

Copy Dasti.