(2020) 02 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petitions (M) No. 2152, 2153 Of 2019

Pankaj Kumar And Ors — APPELLANT

Vs

State Of Himachal Pradesh And Ors — RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 201, 406, 420, 467, 468
Constitution Of India, 1950 — Article 21

Citation : (2020) 02 SHI CK 0014

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : B.B. Vaid, Anuj Gupta, Rohit Sharma, Shiv Pal Manhans, P.K. Bhatti, Amit Dhumal

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in

case FIR No. 250 of 2019, dated 31.08.2019, under Sections 420, 406, 467, 468, 120B and 201 IPC, Police Station Nalagarh, District Solan, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are permanent

residents of Himachal Pradesh and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful

purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, Shri Suresh Kumar (complainant) made a written complaint to the police and alleged that he

is acquainted with the petitioners and the petitioners taking advantage of his gullibility told him that they would manage jobs for his children. The

petitioners, on the pretext of managing jobs for the children of the complainant, demanded rupees ten lac from the complainant, which he paid to them.

As per the complainant, the petitioners also cheated some local people. The complainant prayed that action be taken against the petitioners. Upon the

complaint, so made by the complainant, police registered a case under the apt Sections of IPC and investigation ensued. Police seized the papers

handed over to them by the complainant and later on a Special Investigation Team (SIT) was constituted for probing the matter. On 01.09.2019

accused Chandershekhar and Gagandeep joined the investigation and they were arrested on 02.09.2019. During the course of investigation it was

unearthed that during November, 2017 accused Gagandeep met main accused Rohit Kashta. Initially, on the pretext of getting job for Gagandeep,

accused Rohit Kashta demanded rupees four lac from accused Gagandeep, which accused Gagandeep paid to him, but when no job was managed,

accused Gagandeep joined accused Rohit Kashta in his illegal activities. Later on accused Gagandeep cheated four people on the pretext of managing

jobs for them. Accused Rohit Kashta, Chandershekhar, Pankaj Kumar and Anil Kumar (accused Pankaj Kumar and Anil Kumar, petitioners herein)

were acquainted with each other. The investigation further reveals that accused Chandershekhar cheated many persons on the pretext of managing

jobs for them and he used to introduce people to main accused Rohit Kashta. Police investigation further reveals that there are huge transactions in

the bank accounts of accused persons and some amount was paid to accused Rohit Kashta in cash through petitioner Pankaj. Accused persons,

including the petitioners, used to prepare fake appointment letters, joining letters etc. On the basis of mobile location, petitioner Pankaj Kumar and Anil

Kumar were nabbed by the police near Panchkula Court on 05.09.2019. The records show that the accused persons, including the petitioners, cheated

many persons, and illegally usurped huge amounts. On 08.09.2019 petitioner Anil Kumar made a disclosure statement and got recovered a laptop and

three pen drives from his accommodation at Shivalik Vihar, Nayagaon, Chandigarh. On the basis of mobile location accused Rohit Kashta was

arrested on 08.09.2019. Police also recovered fake appointment letters, joining letters and printer used for the same. Police also recovered display screen and CPU. Accused Rohit Kashta made a disclosure statement and got recovered three appointment letters from his rented accommodation.

Accused Rohit Kashta disclosed that he had broken a printer and threw the same at Ambala Road. On the identification of accused Rohit Kahsta

police recovered broken pieces of a printer. Scientific samples were sent to SFSL, Junga, for analysis. Bank accounts of the accused persons,

including the petitioners, were analysed. As per accused Rohit Kashta he purchased a flat for rupees thirty lac, spend some money in Hotel Palm

House, and paid Rs. 9,48,000/- to one Lucky for purchasing another flat. As per the police, petitioners are clever persons and they cheated many

innocent persons. Investigation reveals that petitioner Anil Kumar is friend of main accused Rohit Kashta and he himself prepared fake appointment

letters and joining letters. The petitioners, alongwith other accused persons, cheated many innocent persons and usurped huge money. On 24.10.2019

challan was presented in the Court and after receipt of report from SFSL Junga, supplementary challan shall be filed. As per the police, the bank

records also show the involvement of the petitioners in the crime. In 2018 accused Gagandeep introduced accused Chandershekhar to accused Rohit

Kashta. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners have committed serious crime by cheating many

innocent persons on the pretext of managing jobs. In case the petitioners are enlarged on bail, at this stage, they may tamper with the prosecution

evidence and may also flee from justice, so the bail applications of the petitioners be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the

police report, carefully.

5. The learned Counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case. He has further argued that

the petitioners are permanent resident of Himachal Pradesh and neither in a position to tamper with the prosecution evidence nor in a position to flee

from justice. He has further argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period. The

investigation in the case is complete and nothing is to be recovered at the instance of the petitioners by the police and the custody of the petitioners is not at all required, so the petitions may be allowed and the petitioners may be enlarged on bail. Conversely, the learned Additional Advocate General

has argued that the petitioners have committed serious crime and in case they are enlarged on bail, they may tamper with the prosecution evidence

and may also flee from justice, so it is prayed that the bail applications of the petitioners may be dismissed.

6. In rebuttal the learned Counsel for the petitioners has argued that the petitioners cannot be kept behind the bars for an unlimited period, especially

when investigation is complete and in the wake of the fact that the custody of the petitioners is not required by the police and the fact that the

petitioners are permanent residents of the place, so the petitions be allowed and the petitioners be enlarged on bail. The learned Counsel for the

petitioner has placed reliance on a judgment of Honâ??ble Supreme Court rendered in Manoranjana Sinh alias Gupta vs. Central Bureau of

Investigation, (2017) 5 Supreme Court Cases 218.

7. At the very outset, it would be apt to analyze the judgment of Honâ??ble Supreme Court rendered in Manoranjana Sinh alias Gupta vs. Central

Bureau of Investigation, (2017) 5 Supreme Court Cases 218, wherein in para 16 it has been held as under:

â??16. This Court in Sanjay Chandra v. CBI (2012) 1 SCC 40: (2012) 1 SCC (Cri) 26: (2012) 2 SCC (L&S) 3,9 a7lso 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 nor 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 a 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 undertrial prisoners for an indefinite

period would amount to violation of article 21 of the Constitution was highlighted.â??

Certainly, punishment begins after conviction and every man is deemed to be innocent until duly tried and found guilty. Agreeably, the aim of bail is

neither punitive nor preventive. However, in the instant case there is possibility that in case the petitioners are enlarged on bail they may flee from

justice or tamper with the prosecution evidence. Thus, simultaneously, it is the duty of the Court not to allow anyone to thwart the process of justice.

In order to secure the presence of the accused for trial, Courts have to see many aspects viz. possibility of accusedâ??s fleeing from justice, the

possibility of evidence being tampered by the accused, gravity of the offence etc. etc. and these factors are vital for allowing or rejecting the bail

application of an accused. In the instant case, the petitioners, alongwith other accused persons, cheated many innocent persons on the pretext of

managing jobs for them and usurped huge amount of money, which is yet to be recovered. The material, which has come in the police investigation,

clearly shows the involvement of the petitioners in the crime. In case the petitioners, at this stage, are enlarged on bail, there is every likelihood that

they may jump over the bail by fleeing from justice or tamper with the prosecution evidence. So, the judgment referred above by the learned counsel

for the petitioners is not applicable to the facts of the present case.

8. At this stage, after hearing the learned counsel for the petitioners, learned Additional Advocate General for the State, carefully analyzing the

material, which has come on record, and looking into various aspects of the case, this Court finds that present is not a fit case to grant bail in favour of

the petitioners. This Court also considers the manner and modus operandi of the accused persons, including the petitioners, the fact that they have

cheated many innocent persons and illegally usurped huge amounts from them on the pretext of managing jobs for them. After considering different facets of the case, the material, which has come on record, the nature of the offence and the manner in which the same has been committed by the

petitioners alongwith others and without going into the merits of the case, this Courts finds that the present is not a fit case where the judicial discretion

to admit the petitioners on bail is required to be exercised in favour of the petitioners. The petitions, which sans merits, deserved dismissal and is

accordingly dismissed.