

(2020) 02 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellauneous Petition (M) No. 135 Of 2020

Prem Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 20, 21, 29
Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 302, 341, 342, 354, 379, 407, 408, 457, 511
Evidence Act, 1872 — Section 106

Citation : (2020) 02 SHI CK 0005

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Manoj Pathak, Narinder Guleria, Bhupinder Thakur, Rajat Chauhan

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. For possessing 84 grams of heroin, the petitioner, who is under arrest, on being arraigned as an accused in FIR number 93 of 2019, dated Oct 8,

2019, registered under Sections 21 & 29 of Narcotic Drugs and Psychotropic Substances Act, 1985, in the file of Police Station Kumarsain, District

Shimla, HP, disclosing non-bailable offences, came up has come up under section 439 CrPC, seeking regular bail.

2. The status report filed. I have seen the status report(s) as well as the police file to the extent it was necessary for deciding the present petition, and

the same stands returned to the police official. I have heard Mr. Manoj Pathak, learned counsel for the petitioner and Mr. Narender Guleria, learned

Additional Advocate General for the respondent/State.

ANALYSIS AND REASONING:

3. On 20.01.2020, this Court passed the following order:

Notice. Mr. Bhupinder Thakur, Deputy Advocate General appears and waives service of notice on behalf of the respondent-State.

The petitioner has not mentioned about his criminal history. Consequently the petitioner shall file an affidavit of a relative or a friend disclosing the

criminal history except petty offences on or before the next date.

List on 23.1.2020.

4. Despite directions of the Court, the Petitioner did not file the requisite affidavit. The Petitioner also did not seek amendment of the petition by mentioning criminal antecedents.

5. The State has placed on record a status report in this case. As per the status report, following cases are pending against the Petitioner:

i) FIR No. 95 of 2009, dated Jul 4, 2009 under Sections 457, 342, 511 IPC registered at Police Station Banjar, HP.

ii) FIR No. 212 of 2009, dated Nov 19, 2009, under Section 20 of the ND&PS Act, registered at Police Station Sadar Shimla, Distt. Shimla, HP. Iii)

FIR No. 32 of 2010, dated Apr 15, 2010, under sections 341, 342, 354 IPC, registered at Police Station Anni, HP.

iv) FIR No. 181 of 2019, dated Aug 12, 2019, under Sections 21 & 29 of the ND&PS Act, registered at Police Station West Shimla, Distt. Shimla,

HP.

6. During arguments, the Counsel for the petitioner did not dispute the factum of the above-mentioned criminal cases.

7. The burden is on the petitioner to mention his criminal history. The data bank of the State and of the Country is not elaborate enough to contain the

criminal history of every accused. Apart from that, there would be some cases where the petitioner might have committed serious offences outside

India. As such, the burden is on the petitioner to mention all such facts in the bail petition.

8. Section 106 of the Indian Evidence Act, 1872, mandates that when any fact is especially within the knowledge of any person, the burden of proving

that fact is upon him.

9. In Ravinder Singh @ Ravi Pavar v. State of Gujarat, (2013) 12 SCC 446,

Supreme Court observed,

“24. In para 5 of the rejoinder affidavit, the State has highlighted that A-2 is a “habitual offender” and there are 22 cases pending against him in

various police stations. It is also mentioned in the counter affidavit that during the period while he was granted temporary bail by the High Court, he

indulged in an offence of theft and a case was registered against him vide I-C.R. No. 92 of 2011 under Section 379 of IPC by the Vasad Police

Station for which he was arrested on 10.08.2011 and later enlarged on bail. It is also brought to our notice that the respondent A-2, while on regular

bail, was arrested on 13.09.2012 in Vadodara city in connection with Javaharnagar Police Station crime registered vide I-C.R. No. 94 of 2012 under

Sections 407, 408 and 120B and later on he was released on bail.

25. Taking note of all these aspects, his antecedents, the gravity and nature of offence, loss of human lives, the impact on the social fabric of the

society, his continuous involvement in criminal activities while on bail, we are satisfied that respondent (A-2) does not deserve to continue to remain on

bail.”

10. In *State of Maharashtra v. Pappu @ Suresh Budharmal Kalani*, (2014) 11 SCC 244, Supreme Court holds,

“14. It is not in dispute that in spite of being acquitted in some of the cases, still there are 15 cases in which trial is pending against the respondent,

out of which two cases are under Sections 302 read with 120B, IPC. In the present case also, initially along with charges under Sections 302/120B,

IPC offences punishable under TADA were also charged against the respondent but later on the TADA charges were withdrawn. Though we are

not inclined to go into the matter in detail at present to interfere in the order passed by the High Court, taking into consideration the peculiar facts and

circumstances of the case, we are inclined to interfere and cancel the bail granted by the High Court.”

11. In *Chandrakeshwar Prasad @ Chandu Babu v. State of Bihar*, (2016) 9 SCC 443, Supreme Court holds,

“13. On a careful perusal of the records of the case and considering all the aspects of the matter in question and having regard to the proved

charges in the concerned cases, and the charges pending adjudication against the respondent-accused and further balancing the considerations of

individual liberty and societal interest as well as the prescriptions and the perception of law regarding bail, it appears to us that the High Court has erred in granting bail to the respondent-accused without taking into consideration the overall facts otherwise having a bearing on the exercise of its discretion on the issue.

14. Judged on the entire conspectus of the attendant facts and circumstances and considering the stage of the present case before the trial court

where charge-sheet has already been submitted, together with pending proceedings against the respondent-accused as on date, and his recorded

antecedents in the various decisions of this Court, we are thus unable to sustain the impugned order of the High Court granting bail to him.â??

12. In *Neeru Yadav v. State of U.P.*, (2016) 15 SCC 422, Supreme Court, rejected the bail granted by the High Court, by holding as follows,

â??9. On a perusal of the aforesaid list, it is quite vivid that the respondent No. 2 is a history-sheeter and is involved in heinous offences. Having

stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-

sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.

10. In *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598, it has been clearly laid down that the grant of bail though involves exercise of

discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature

of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In

the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi*, (2001) 4 SCC 28,0 and thereafter the court proceeded to state the

following principles:-

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails

a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh

with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of

the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) 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.

11. It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See Chaman Lal v. State of U.P., (2004) 7 SCC 525]

12. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, while dealing with the court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in catena of judgments on that point. The Court proceeded to enumerate the factors: -

9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (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.

13. We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though

committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime, as is understood, creates a dent in the law and order situation. In a civilised society, a crime disturbs orderliness. It affects the peaceful life of the society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the society; and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus: -

Men are qualified for civil liberty, in exact proportion to their disposition to put moral chains upon their own appetites; in proportion as their love to justice is above their rapacity; in proportion as their soundness and sobriety of understanding is above their vanity and presumption; in proportion as they are more disposed to listen to the counsel of the wise and good, in preference to the flattery of knaves. Society cannot exist unless a controlling power upon will and appetite be placed somewhere and the less of it there is within, the more there must be without. It is ordained in the eternal constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters [Alfred Howard, The Beauties of Burke (T. Davison, London) 109].

14. E. Barrett Prettyman, a retired Chief Judge of US Court of Appeals had to state thus: -

In an ordered society of mankind there is no such thing as unrestricted liberty, either of nations or of individuals. Liberty itself is the product of restraints; it is inherently a composite of restraints; it dies when restraints are withdrawn. Freedom, I say, is not an absence of restraints; it is a composite of restraints. There is no liberty without order. There is no order without systematised restraint. Restraints are the substance without which liberty does not exist. They are the essence of liberty. The great problem of the democratic process is not to strip men of restraints merely because they are restraints. The great problem is to design a system of restraints which will nurture the maximum development of man's capabilities, not in a massive globe of faceless animations but as a perfect realisation, of each

separate human mind, soul and body; not in mute, motionless meditation but in flashing, thrashing activity [Speech at Law Day Observances (Pentagon, 1962) as quoted in Case and Comment, Mar-Apr 1963.]

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

16. In this regard, we may profitably reproduce a few significant lines from Benjamin Disraeli :-

I repeat..... that all power is a trust-that we are accountable for its exercise - that, from the people and for the people, all springs, and all must exist.

17. That apart, it has to be remembered that justice in its conceptual eventuality and connotative expanse engulfs the magnanimity of the sun, the sternness of mountain, the complexity of creation, the simplicity and humility of a saint and the austerity of a Spartan, but it always remains wedded to rule of law absolutely unshaken, unterrified, unperturbed and loyal.â??

13. The summary of the above judicial precedents points out that criminal history of the accused is an important factor while deciding bail petitions.

14. The relevant provision of the Code of Criminal Procedure, 1973 read as follows:

437. When bail may be taken in case of non-bailable offence. -(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but -

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or

imprisonment for life;

(ii) such person shall not be so released if such offence is a cognisable offence and he had been previously convicted of an offence punishable with

death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognisable

offence punishable with imprisonment for three years or more but not less than seven years: Provided that the Court may direct that a person referred

to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to

do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient

ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as

may be given by the Court.

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or

imprisonment for seven years or more, be released on bail by the Court under this sub-Section without giving an opportunity of hearing to the Public

Prosecutor.

15. Given above, henceforth it is obligatory that in every bail petition, the petitioner must mention about all pending FIRs and pending criminal trials,

where the sentence provided is seven years or more. Furthermore, the petitioner must specify details of all cases where he was convicted and

sentenced to imprisonment for one year or more.

16. In addition to above, in every bail petition filed in any Court within the jurisdiction of the State of Himachal Pradesh, the State/Respondent(s) shall

explicitly mention in the status report about the criminal history. In bail petitions where there is no pleading about the criminal history, then the

State/Respondent(s) shall bring it to the notice of the concerned Court about non-mentioning of the criminal history. In such a situation, it shall be for

the concerned Court to take a call, if it so desires, depending upon the facts of each case.

17. Ld. Registrar Vigilance of this Court to circulate a soft copy of this order to all Sessions Judges, Additional Sessions Judges, all Chief Judicial

Magistrates, Addnl. Chief Judicial Magistrates and all Judicial Magistrates of Himachal Pradesh. Similarly, Ld. Advocate General of the State of H.P.

to circulate a soft copy of this order to all District Magistrates, all Police Stations, as well as to CBI, NCB and all concerned. It is further clarified that

both the Registrar Vigilance as well as Advocate General shall circulate only soft copy of the judgment and not the printout/hard copy.

18. At this stage, the Registry has placed on record one affidavit filed by the petitioner and the said affidavit was filed on Feb 18, 2020. However this

affidavit is inconclusive and it does not disclose all particulars. Therefore, it is not termed as compliance of previous order.

19. Resultantly, due to non-compliance of the directions of this Court, the petition stands dismissed. The dismissal of this bail shall not come in the way

of the petitioner for filing subsequent bail petitions, before this Court.