

(2019) 02 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1586 Of 2018

Ritesh Bhikta

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Scheduled Castes And the Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(1)
Code Of Civil Procedure, 1908 — Section 439
Indian Penal Code, 1860 — Section 34, 302, 341, 323, 506
Code Of Criminal Procedure, 1973 — Section 154, 161, 164

Citation : (2019) 02 SHI CK 0003

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Ajay Kochhar, Varun Chauhan, Dinesh Thakur, Sunny Dhatwalia, Jaswant Singh

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Present bail petition under S.439 CPC, has been filed by the bail petitioner namely Ritesh Bhikta, who is behind the bars since 5.10.2018, for grant of regular bail in connection with FIR No. 67 of 2018 dated 5.10.2018, under Ss. 302, 341, 323, 506 and 34 IPC and Section 3 (1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station, Nerwa, District Shimla, Himachal Pradesh.

2. Sequel to order dated 11.1.2019, ASI Jawant Singh, I/O, Police Station, Nerwa, District Shimla, Himachal Pradesh, has come present with record. Mr. Dinesh Thakur, learned Additional Advocate General has also placed on record status report, prepared on the basis of investigation carried out by the investigating Agency. Record perused and returned.

3. Close scrutiny of the record/status report suggests that on 5.10.2018,

complainant namely Baldev Raj, father of the deceased Rajat Kumar, lodged a complaint with the police at Nerwa, alleging therein that on 5.10.2018, his son namely Rajat Kumar, who had gone to Bohrad to drop his mother in a car alongwith one Aman Himta, was given merciless beatings by the present bail petitioner as well as other co-accused namely Nikhil, Satish and Kartik. Complainant further alleged that at about 4.30 pm, car being driven by his son- Rajat Kumar, was stopped near College at Nerwa by the present bail petitioner, who at the relevant time was driving Swift Car bearing registration No. T-2864I. Allegedly, Ritesh Bhikta (bail petitioner), started quarelling with the deceased Rajat Kumar, on the pretext that he (Rajat Kumar) failed to give pass to his car and bail petitioner gave beatings to the deceased Rajat Kumar, as a consequence of which, he (Rajat Kumar), suffered injuries. Complainant specifically stated in the complaint that factum with regard to scuffle between bail petitioner and deceased came to his notice through the person namely Aman Himta, who at the relevant time was with the deceased, Rajat Kumar. On the basis of aforesaid complaint lodged by the complainant, Baldev Raj, a formal FIR, as mentioned herein above, came to be lodged against the bail petitioner as well as co-accused namely Nikhil, Kartik and Satish. Present bail petitioner is behind the bars since the date of lodging of FIR i.e. 5.10.2018, whereas, other co-accused namely Nikhil and Satish Kumar have been enlarged on bail, being juveniles. Similarly, another accused-Kartik has been also ordered to be enlarged on bail by this court vide order dated 8.1.2019, passed in CrMP(M) No. 1623 of 2018.

4. Before advertng to the factual matrix of the case, it may be noticed that the complaint, as has been taken note herein above, was lodged by the complainant, when deceased Rajat Kumar was alive, rather, record reveals that initial statement under S.154 CrPC was recorded in the presence of Rajat Kumar, who was taken to Civil Hospital, Nerwa thereafter, for treatment, but, unfortunately, he succumbed to the injuries alleged to have been suffered by him in the scuffle. After recording the statement of Aman Himta, under S.164 CrPC, before the Magistrate, Police sent the body of the deceased for post-mortem to Indira Gandhi Medical College, Shimla. Medical officer, vide report dated 11.10.2018 opined that, "deceased died as a result of acute coronary insufficiency leading to cardiogenic shock and death. However, chemical examiner's report is awaited."

5. Mr. Ajay Kochhar, learned counsel representing the bail petitioner, while making this court to travel through the status report vis-à-vis record made available to this court, vehemently argued that no case, much less, case under S.302 IPC is made out against the bail petitioner. He further contended that a bare perusal of the statement given by Aman Himta under S.164 CrPC, clearly suggests that the deceased Rajat had fled away from the place of alleged occurrence because, it has specifically come in his statement that there was an altercation between deceased and bail petitioner, but deceased fled away from the spot, who later on informed him over the telephone that he (Rajat Kumar) was having pain in his chest. While referring to the post-mortem report, Mr. Kochhar contended that though there is no positive evidence adduced on record

till date by the investigating agency to connect the bail petitioner with the offence alleged to have been committed by him, but, even if it is presumed that he was involved in the crime, post-mortem report nowhere reveals that the deceased died due to injuries allegedly caused to him in the scuffle, rather, report clearly suggests that the deceased died because of heart attack. Mr. Kochhar further contended that all co-accused stands already enlarged on bail and nothing remains to be recovered from the bail petitioner, as such, he also deserves to be enlarged on bail. Lastly, Mr. Kochhar, contended that there is nothing on record to demonstrate that the bail petitioner had been indulging in such activities in the past and as such, bail petitioner, being first offender, deserves to be enlarged on bail.

6. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly admitting the factum with regard to completion of the investigation, contended that keeping in view the gravity of offence, alleged to have been committed by the bail petitioner, he does not deserve to be enlarged on bail. Mr. Thakur, learned Additional Advocate General, further contended that, true it is that other co-accused has been ordered to be enlarged on bail, but present bail petitioner being the main accused, can not be allowed to be released on bail at this stage. While referring to the statements of the witnesses recorded under S.161 CrPC and statement of Aman Himta recorded under S.164 CrPC, Mr. Thakur made a serious attempt to persuade this court to agree with his contention that it was the bail petitioner who gave beatings to the deceased Rajat Kumar, and as such, it cannot be said that he was not involved in the alleged crime. While referring to the post-mortem report, Mr. Thakur, contended that the report of the SFSL is still awaited and as such, it would be premature to conclude that the deceased Rajat Kumar died due to heart attack. While praying for rejection of bail application, Mr. Thakur, learned Additional Advocate General, strenuously argued that a young boy has lost his life due to unruly behaviour of the bail petitioner and other co-accused, as such, present bail petition may be dismissed.

7. Having heard the learned counsel for the parties and perused material available on record, this court, though, finds that on the date of alleged incident, present bail petitioner alongwith co-accused stopped the vehicle of the deceased- Rajat Kumar, who at the relevant time was in the company of Aman Himta, but, if statement of Aman Himta recorded under S.164 CrPC is read in its entirety, it certainly suggests that immediately after stopping of the car by the bail petitioner and other co-accused, deceased Rajat Kumar fled from the spot and thereafter he telephonically informed Aman Himta that he (Rajat Kumar) is having pain in his chest.

8. Though, guilt, if any, of the bail petitioner and other co-accused is to be determined in the totality of evidence collected on record by the investigating agency, but, at this stage, this court having carefully perused the material available on record, has no hesitation to conclude that there is no sufficient evidence collected at this stage to infer that the deceased died on account of

beatings allegedly given to him by the bail petitioner and co-accused. On the top of everything, if post-mortem report is perused, it certainly compels this court to agree with Mr. Ajay Kochhar, learned counsel representing the bail petitioner that at present there is no evidence to conclude that the deceased died on account of injuries allegedly inflicted upon him in the scuffle, which allegedly took place between the bail petitioner and Rajat Kumar.

9. Interestingly, this court, while perusing the record, was able to lay its hand to communication dated 29.11.2018, which is addressed to the Police by the Associate Professor, Forensic Medicines, Indira Gandhi Medical College, Shimla, in response to letter No. 2778, dated 20.10.2018, wherein police had asked for certain opinion, whereby the Forensic Expert has rendered his opinion, which may be usefully extracted herein below:

"Subject: Regarding opinion FIR No. 67/2018 dated 5.10.2018, under Sections 302, 341, 323, 506, 34 IPC & 3(1) SC & ST (POA) Amendment Act 2015 (1 of 2016) Police Station, Nerwa, District Shimla.

As per letter No. 2778 dated 20.10.2018, which was received in this office on 25.10.2018, regarding the said subject, find the answers to queries raised therein as below:

Sr. Question Answer

No.

1 Is it possible There is no external/internal injury that deceased present over the body of the deceased Rajat Kumar which is sufficient to cause death.

died due to beatings in the quarrel or not?

2 Is there any Following internal injuries were internal injury appreciated and documented already sustained/prese in postmortem report: nt over the body

1. There is 1x1 cm contusion over of the deceased the left side of forehead Rajat Kumar appreciated after reflecting during the scalp without external quarrel or not? corroborative injury without any fracture or intracranial bleed.

2. There is fracture of fourth rib on right side on anterior axillary line with minimal contusion of ½ cm x ½ cm is 3 rd and 4th intercostal space without any external

3. There is 2 X 1 cm contusion in inter-cellular space over two great vessels near heart without external corroborative evidence of injury on overlying skin.

3. It is possible The board of autopsy surgeons did that deceased not attend the deceased just before died due to death to venture the opinion on this jolt/shock due question." to beating or not?

10. Perusal of communication taken note herein above, reveals that during post-mortem, no external/internal injury was found on the body of the deceased,

which was sufficient to cause his death. If aforesaid opinion is read juxtaposing the post-mortem report, this court is persuaded to infer at this stage that the cause of death of deceased is not the injuries, which deceased allegedly suffered in the scuffle. True it is that the report of SFSL is still awaited, but, this court can not lose sight of the fact that the receipt of same may consume a considerable time, but, having perused the record, this court sees no reason to let the bail petitioner remain behind the bars for an indefinite period during the trial, especially when Challan stands filed in the competent Court of law.

11. Albeit, aforesaid aspects of the matter would be considered and decided by the learned trial Court, in the totality of evidence placed before it by the investigating agency, but, this court sees no reason to curtail the freedom of the bail petitioner, especially for the reasons stated herein above. Moreover, bail petitioner has also suffered for more than four months.

12. 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 held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held 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*."

13. By now it is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that 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. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)¹ Supreme Court Cases 49; has been 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 propose of giving him a taste of imprisonment as a lesson."

14. 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 also, normal rule is of bail and not jail. Apart from above, 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.

15. In *Manoranjana Sinh alias Gupta versus CBI*, (2017) 5 SCC 218, Hon'ble Apex Court has held as under:

"This Court in *Sanjay Chandra vs. Central Bureau of Investigation* (2012) 1 SCC 40, 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 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 that 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."

16. The Apex Court in *Prasanta Kumar Sarkar versus 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.

17. In view of above, bail petitioner has carved out a case for grant of bail and as such, present petition is allowed. Petitioner is ordered to be enlarged on bail subject to his furnishing bail bonds in the sum of Rs.2,00,000/- (Rs. Two Lakh) with two local sureties in the like amount, to the satisfaction of the Chief Judicial Magistrate concerned/trial court, besides the following conditions:

(a) He shall make himself 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) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

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

(d) He shall not leave the territory of India without the prior permission of the Court.

(e) He shall surrender passport, if any, held by her.

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

19. 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 petition alone.

The petition stands accordingly disposed of.