

(2020) 09 SHI CK 0213

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1311 Of 2020

Roshan Lal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 21

Indian Penal Code, 1860 — Section 376D

Code Of Criminal Procedure, 1973 — Section 154, 164, 437A, 446, 446A

Citation : (2020) 09 SHI CK 0213

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Ravinder Singh Chandel, Nand Lal Thakur, Divya Sood

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, who is under incarceration after his arrest for outraging the modesty of a woman aged 50 years, has come up before this Court, seeking regular bail.

2. Based on a complaint, the police arrested the petitioner on 15.7.2019 in FIR No.59/2019, dated 15.7.2019, registered under Section 376D of Indian Penal Code, 1860, (IPC), in Police Station, Jubbal, District Shimla, Himachal Pradesh, disclosing cognizable and non-bailable offences.

3. I have read the status report(s) and heard counsel for the parties.

FACTS:

4. Briefly, the facts are that the Police received information from one Udham Lal that a lady (victim) had visited his house and at that time, he had gone to purchase vegetables. When he reached home, the victim told him that one Roshan Lal had committed wrong act upon her. Based upon such information, the

Police visited the spot and recorded the statement of the victim under Section 154 Cr.PC. The victim informed the Investigator that she is a widow and her children are married. For the last five years, she was in live-in relationship with one person. While working, she fell down and broke her bone of foot and consequently it was plastered, but she was able to walk. She further stated that on 15.7.2019 in the morning, her husband had gone out to work in an orchard. After sometime, one Udham Lal visited her home and committed rape upon her and after that left her home. After sometime, Udham Lal made a phone call to her and asked her to visit his house. Roshan Lal (present petitioner) was already sitting there. On reaching there, Udham Lal took out a bottle of liquor and then she alongwith them took liquor. After consuming the liquor, Roshan Lal took her to a different room whereas Udham Lal was watching TV in the other room. Roshan Lal committed rape upon her in that separate room and after that she returned to her room and slept there. Therefore, in nut shell, she complained that both, Udham Lal and Roshan Lal, committed rape upon her. Based on this information, the Police registered the aforesaid FIR. Thereafter, the Police took her for medical examination where Doctor collected her vaginal swab and also took her urine sample. After registration of the FIR, the Police arrested both accused persons. Later on, the prosecution got the samples tested from Forensic Science Laboratory. The Laboratory, on testing, found that the DNA profile of accused Udham Lal and victim matched, whereas the Laboratory did not find any positive report about the sample of the present petitioner, Roshan Lal. The Laboratory also found alcohol in her urine. On 16.7.2019, the Police also took the victim to the concerned Judicial Magistrate where she made her statement under Section 164 Cr.PC.

PREVIOUS CRIMINAL HISTORY

5. The counsel for the petitioner states that the accused has no criminal history. The status report also does not dispute this assertion.

SUBMISSIONS:

6. Learned counsel for the bail petitioner submits that the petitioner is innocent and has falsely been implicated in the present case.

7. On the contrary, Mr. Nand Lal Thakur, learned Additional Advocate General, contended that there is sufficient prima facie evidence against the petitioner. He further submits that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions and accused be restrained from contacting the victim.

8. JUDICIAL PRECEDENTS:

a) In *Gurbaksh Singh Sibbia and others v. State of Punjab*, 1980 (2) SCC 565, a Constitutional bench of Supreme Court holds in Para 30, as follows:

"It is thus clear that the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must

enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail."

b) In *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav*, 2005 (2) SCC 42, a three-member bench of Supreme Court holds:

"18. It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing requires that such persons to be released on bail, in spite of his earlier applications being rejected, the courts can do so."

c) In *State of Rajasthan, Jaipur v. Balchand*, AIR 1977 SC 2447, Supreme Court holds:

"2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

3. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime."

d) In *Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*, (1978) 1 SCC 240, Supreme Court in Para 16, holds:

"The delicate light of the law favours release unless countered by the negative criteria necessitating that course."

e) In *Dataram Singh v. State of Uttar Pradesh*, (2018) 3 SCC 22, Supreme Court holds:

"1. 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.

6. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

ANALYSIS AND REASONING:

9. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

10. In the statement under Section 164 Cr.PC, the victim stated that after Udham Lal had committed rape upon her, it was Udham Lal who again called her to visit his house and she went to his house. Accused Roshan Lal was also present there and then those people made her consume alcohol. After that, they bolted the door from inside and then Roshan Lal committed rape upon her. The conduct of the victim to again visit the house of Udham Lal on his phone-call, although, as per her case, she was already subjected to rape by him, makes out a case for bail in favour of the petitioner. It is not appropriate, at this stage, to appreciate the other evidence.

11. The nature of the offence also does not restrict bail. Further incarceration of the accused during the period of trial is neither warranted, nor justified, or going to achieve any significant purpose. Without commenting on the merits of the case, the fact that the investigation is almost complete and the accused is in jail for a considerable period, coupled with the ongoing situation due to the Covid-19 pandemic, would make out a case for bail.

12. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative conditions and stringent conditions.

13. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and

irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

14. Following the decision of this Court in *Abhishek Kumar Singh v. State of HP*, Cr.MP(M) No. 1017 of 2020, the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Ten thousand only (INR 10,000/-), and shall either furnish two sureties of a similar amount to the satisfaction of the Chief Judicial Magistrate/Ilaqua Magistrate/Duty Magistrate/the Court exercising jurisdiction over the concerned Police Station where FIR is registered, or the aforesaid personal bond and fixed deposit(s) for Rs. Ten thousand only (INR 10,000/-), made in favour of concerned Additional Chief Judicial Magistrate/ Judicial Magistrate, from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account. Such a fixed deposit need not necessarily be made from the account of the petitioner. If such a fixed deposit is made manually, then the original receipt has to be deposited. If made online, then the copy attested by any Advocate has to be filed, and the depositor shall get the online liquidation disabled. It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. During the trial's pendency, it shall be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa. Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). The Court shall have a lien over the deposits until discharged by substitution, and otherwise up to the expiry of the period mentioned under S. 437-A CrPC, 1973.

15. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to give security to the concerned Court(s) for attendance. Once the trial begins, the petitioner shall not, in any manner, try to delay the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted, and in case of appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.

b) The attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

c) The petitioner shall join investigation as and when called by the Investigating Officer or any Superior Officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5 PM. The petitioner shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.

d) The petitioner shall cooperate with the investigation at all further stages as may be required, and in the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail granted by the present order.

e) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

f) In addition to standard modes of processing service of summons, the concerned Court may serve the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020].

g) The concerned Court may also inform the accused about the issuance of bailable and non-bailable warrants through the modes mentioned above.

h) In the first instance, the Court shall issue summons and may send such summons through SMS/ WhatsApp message/ E-Mail.

i) In case the petitioner fails to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioner about such Bailable Warrants through SMS/ WhatsApp message/ E-Mail.

j) Finally, if the petitioner still fails to put in an appearance, then the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

k) In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner alone and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

l) The petitioner shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within thirty days from such modification, to the Police Station of this FIR, and also to the concerned Court.

m) The petitioner shall abstain from all criminal activities. If done, then while considering bail in the fresh FIR, the Court shall take into account that even earlier, the Court had cautioned the accused not to do so.

n) Considering the apprehension expressed by the learned counsel appearing for the respondent, the petitioner should stay far away from the place of occurrence while on bail - (Vikramsingh v. Central Bureau of Investigation, 2018 All SCR (CrI.) 458).

o) The petitioner shall neither contact the victim, speak with her, talk to her, look at her, in any manner whatsoever nor roam around the victim's home.

p) The petitioner shall surrender all firearms along with ammunitions, if any, along with the arms license to the concerned authority within 30 days

from today. However, subject to the provisions of the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back, in case of acquittal in this case.

q) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioner. Otherwise, the bail bonds shall continue to remain in force throughout the trial and also after that in terms of Section 437-A of the CrPC.

r) During the trial's pendency, if the petitioner repeats the offence or commits any offence where the sentence prescribed is seven years or more, then the State may move an appropriate application for cancellation of this bail.

16. The learned counsel representing the accused and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order to the petitioner, in vernacular and if not feasible, in Hindi or English.

17. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even before the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

18. Consequently, the petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing bail bonds in the terms described above.

19. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation in accordance with law.

20. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

21. The Court attesting the bonds shall not insist upon the certified copy of this

order. Any Advocate for the petitioner may download this order from the website of this Court, and attest it, which shall be sufficient for furnishing bonds and the record. The Court Master shall handover an authenticated copy of this order to the Counsel for the Petitioner and the Learned Advocate General if they ask for the same.

22. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant as well as the victim, at the earliest.

23. In return of the freedom curtailed for breaking the law, the Court believes that the accused shall also reciprocate through desirable behavior.

The petition stands allowed in the terms mentioned above.