

(2020) 07 SHI CK 0229

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1058, 1059 Of 2020

Salamat Ali And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 13-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 154, 436, 436A, 439
Indian Penal Code, 1860 — Section 147, 148, 149, 307, 323

Citation : (2020) 07 SHI CK 0229

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Kush Sharma, Sudhir Bhatnagar, Arvind Sharma, Kunal Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Since both these petitions arise out of same FIR, they were taken up together and are being disposed of by this common judgment.

2. Bail petitioners have approached this Court in the instant proceedings filed under S.439 CrPC, for grant of regular bail in FIR No. 78, dated 22.6.2020, under Ss. 147, 148, 149, 323 and 307 IPC registered at Police Station Majra, District Sirmaur, Himachal Pradesh.

3. Perusal of the status report filed by the investigating agency pursuant to order dated 1.7.2020 reveals that on 21.6.2020, complainant Avinesh Kumar got his statement recorded under S.154 CrPC, at Police Station Majra, District Sirmaur, Himachal Pradesh alleging therein that on 21.6.2020, his younger brother, Rakesh Kumar, had gone for a hair-cut. At 6.30 pm, person namely Abid Ali picked up a quarrel with him and gave younger brother of complainant beatings with Danda. He disclosed to the police that after having come to know about this, he rushed the spot where he alongwith his brother was given beatings by

persons namely Abid Ali, Mobin, Shahrukh, Fareed, Firoj, Salman, Salamat, Khalid, Rakib Ali, Aarif Nai and Tajim, as a consequence of which they suffered multiple injuries. Complainant also alleged that the above named persons also gave beatings to other family members namely Dinesh, Saurabh, Sanjay, Manoj, Chaman, Dharmender, Virender, Gaurav etc., who had come to the spot to rescue them from above named persons. On the basis of aforesaid complaint, FIR detailed herein above came to be lodged against the bail petitioners, who are behind the bars since 27.6.2020.

4. Mr. Sudhir Bhatnagar, learned Additional Advocate General, while fairly admitting that nothing remains to be recovered from the bail petitioners, contended that in the event of bail petitioners being enlarged on bail, there is apprehension of breach of peace in the area, as such, prayed for dismissal of the bail petitions. Mr. Bhatnagar, further contended that since the dispute has arisen inter se two communities, it may not be appropriate to enlarge the bail petitioners at this stage, since in the event of being enlarged, they may not only flee from justice but may involve themselves in such incidents again.

5. Having heard learned counsel for the parties, this Court finds that on 21.6.2020, a quarrel took place between brother of the complainant and the persons named in the FIR. However, keeping in view the fact that Salamat Ali is 80 years of age and name of another bail petitioner namely Shabir Ahmad was never disclosed to the police by the complainant, while getting his statement recorded under S.154 CrPC, this Court sees no reason to keep the bail petitioners behind the bars for an indefinite period during trial. It appears that both the bail petitioners have been roped in the case on the basis of CCTV footage but it has not been specifically stated in the status report that bail petitioners were seen inflicting injuries on the complainant or his brother.

6. Moreover, status report itself reveals that the bail petitioners have been sent to judicial custody, meaning thereby nothing remains to be recovered from them and they are not required by the investigating agency. Status report though reveals that a number of cases have been registered against the persons originally named by the complainant in the statement under S.154 CrPC, but there is no case, if any, against the bail petitioners, as such, apprehension expressed by learned Additional Advocate General, that in the event of bail petitioners being enlarged on bail, they may flee from justice, can be best met by putting the bail petitioners to stringent conditions

7. Otherwise also, guilt, if any, of the bail petitioners is yet to be determined in the totality of the evidence collected on record by the prosecution and as such, it would not be fair to let the bail petitioners incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from them. Hon'ble Apex Court as well as this Court have held in a catena of judgments that a person is deemed to be innocent, till the time his/her guilt, is proved in accordance with law.

8. 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*."

9. 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."

10. 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.

11. 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."

12. 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.

13. In view of above, bail petitioners have carved out a case for themselves. Consequently, present petitions are allowed. Petitioners are ordered to be enlarged on bail subject to furnishing bail bonds in the sum of Rs.1,00,000/-

each with one local surety in the like amount, to the satisfaction of the Investigating Officer/Magistrate available at the station, besides the 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/her 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.

(e) They shall surrender passport, if any, held by them.

14. It is clarified that if petitioners misuse the 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.

15. 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.

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