

(2023) 03 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 297 Of 2023

Salim Mohamad Alias Babu Khan

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Citation : (2023) 03 SHI CK 0005

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Kanta Thakur, S.K. Panwar, Anoop Rattan, Rajan Kahol, Vishal Panwar

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. By way of instant petition filed under S.439 CrPC, prayer has been made by bail petitioner Salim Mohamad alias Babu Khan for grant of regular bail in FIR No.27, dated 25.1.2022 registered at Police Station Nalagarh, under S.452, 323, 324, 326, 307 and 201 IPC.

2. Respondent-State has filed status report. Investigating Officer has come present with record. Record perused and returned.

3. Close scrutiny of record reveals that on 25.1.2022, police after having received information from CHC Nalagarh that two persons, a man and a woman, have been brought in injured condition for treatment, reached the Hospital and recorded the statement of complainant Rajinder Kumar, who in his statement recorded under S.154 CrPC alleged that on 11.1.2022, he reached his room at Nalagarh after being released from Model Jail Kanda and at around 3.30 pm, when he was present in the room with his wife, Jasbir Kaur, bail petitioner entered the room and attacked him as well his wife with Darat with a view to take their lives. Complainant alleged that on account of blow of Darat, he and his wife suffered grievous injuries. In the aforesaid background, police lodged FIR

against the bail petitioner as detailed above and arrested the bail petitioner on 26.1.2022 and since then he is behind the bars. Since investigation is complete and nothing remains to be recovered from the bail petitioner, he has approached this Court in the instant proceedings, for grant of regular bail.

4. Learned counsel for the petitioner states that since the Challan stands filed in competent court of law and nothing remains to be recovered from bail petitioner, prayer made on his behalf for grant of regular bail, deserves to be considered. She states that factum of injury, if any, caused by the bail petitioner is yet to be established on record by prosecution by leading cogent and convincing evidence as such, it may not be in the interests of justice to let the bail petitioner incarcerate in jail for an indefinite period.

She further states that till date the weapon allegedly used by the bail petitioner for inflicting injury on the persons of the complainant and his wife has not been recovered, meaning thereby that the complainant concocted false story to implicate the bail petitioner. Learned counsel for the petitioner further states that since complainant and his wife have already recovered from the injuries allegedly suffered by them, and they are out of danger, prayer for grant of regular bail made by the bail petitioner in the present petition may be accepted. She further states that the bail petitioner would be always available for trial, as and when required/summoned by the court.

5. While fairly admitting factum with regard to filing of Challan in the competent court of law, learned Additional Advocate General states that keeping in view gravity of offence alleged to have been committed by the bail petitioner, he does not deserve any leniency and his prayer for bail deserves outright rejection. While making this court peruse material available on record, learned Additional Advocate General states that the complainant and his wife suffered grievous injuries on vital parts of their bodies. Mr. Rajan Kahol, learned Additional Advocate General further submits that as per opinion given by Medical Officer, PGI, wife of the complainant suffered injuries which were dangerous to her life, as such, bail petitioner has been rightly booked under S. 307 IPC. He states that in the event of enlargement on bail, the bail petitioner may cause harm to complainant and his wife, as such, his prayer for grant of bail deserves outright rejection.

6. Having heard learned counsel for the parties and perused material available on record, this court finds that allegedly on 25.1.2022, bail petitioner attacked complainant and his wife with Darat due to which they suffered multiple injuries but there is no eye witness to such incident. Factum with regard to injury, if any given by bail petitioner with the help and aid of Darat is yet to be established on record by leading cogent and convincing evidence. No doubt, medical evidence on record suggests that the complainant and his wife suffered grievous injuries in the alleged incident, but there is no direct evidence available at this stage, to prove complicity if any of the bail petitioner rather, complicity /involvement, if any, of the bail petitioner is yet to be established on record by prosecution. Bail

petitioner is behind bars for more than one year without being held guilty.

7. Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. Though it is yet to be established on record that the complainant as well as his wife suffered injuries after being given blow of Darat by the bail petitioner but even otherwise, both complainant and his wife have recovered and are out of danger. Letting the bail petitioner incarcerate in jail during trial would amount to pre-trial conviction and as such, this court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial. Apprehension expressed by learned Assistant Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

8. 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 been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

9. Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49 has held 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.

10. In Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218, Hon'ble Apex Court has held that the 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. The Apex Court in Prasanta Kumar Sarkar versus Ashis Chatterjee and another (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

12. In view of above, bail petitioner has carved out a case for himself, as such, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.50,000/- with one local surety

in the like amount each, to the satisfaction of the learned 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.

13. 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.

14. 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.

A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.