

(2021) 02 SHI CK 0086

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 231 Of 2021

Shahzad And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437A, 438, 446

Citation : (2021) 02 SHI CK 0086

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Arun Sehgal, Ashok Sharma, Anil Jaswal, Somesh Raj, Svaneel Jaswal

Final Decision : ?Allowed

Judgement

Anoop Chitkara, J

1. For committing cruelty, intimidation and causing simple hurt to the complainant, the petitioners apprehending arrest came up before this Court under Section 438 CrPC, seeking anticipatory bail.

2. A perusal of the petition reveals that the petitioners straightaway filed the bail petition before High Court, which is permissible given the decision of

a three Judges Bench of HP High Court, in Mohan Lal v Prem Chand, AIR 1980 HP 36, (Para 9 & 15), wherein the Full bench holds that a person

can directly apply for an anticipatory bail or regular bail to the High Court without first invoking the jurisdiction of the Sessions Judge.

3. In Para 6 of the bail application, the petitioners declare having no criminal history.

4. On the allegations of cruelty, intimidation and causing simple hurt, a married lady informed the Police Station which led to the registration of FIR

mentioned above against the husband, father-in-law and mother-in-law.

5. Ld. Counsel for the petitioners contends that during interim bail, the petitioners joined the investigation, and custodial investigation would serve no purpose whatsoever. The incarceration before the proof of guilt would cause grave injustice to the petitioners and family.

6. Ld. Additional Advocate General contends that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

7. Reasoning : In the facts and circumstances peculiar to this case, this Court is of the opinion that sending the petitioners for custodial interrogation

would further increase the bitterness between the petitioners and the complainant and would have a long lasting effect. Therefore, petitioners make out a case for release on bail.

8. In the present case, the maximum sentence imposable for the offences mentioned in FIR attracts the application of the directions passed in Arnesh

Kumar v. State of Bihar, (2014) 8 SCC 273, (Para 13), wherein Honâ??ble Supreme Court directed all the State Governments to instruct its police

officers not to arrest automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may

extend to seven years; whether with or without fine.

9. Given the above reasoning, the Court is granting bail to the petitioners, 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.

10. In Manish Lal Shrivastava v State of Himachal Pradesh, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that

any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to

switch over to another.

11. Given above, the petitioners shall be released on bail in the FIR mentioned above, subject to their furnishing personal bonds of Rs. Twenty-five

thousand (INR 25,000/-) each, and shall furnish two sureties each of a similar amount, to the satisfaction of the Investigator. Before accepting the

sureties, the Attesting Officer must satisfy that in case the accused fail to appear in Court, then such sureties are capable to produce the accused

before the Court, keeping in mind the Jurisprudence behind the sureties, which is

to secure the presence of the accused.

12. In the alternative, the petitioners may furnish aforesaid personal bonds and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-),

made in favour of ""Chief Judicial Magistrate, District Shimla, H.P.,

a) The arresting Officer shall give a time of ten working days to enable the accused to prepare a fixed deposit.

b) Such Fixed deposits may be made 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.

c) Such a fixed deposit need not necessarily be made from the account of the petitioner(s) and need not be a single fixed deposit.

d) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

e) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get

the online liquidation disabled.

f) The petitioners or their Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such

information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as

well as FIR number.

g) After that, the petitioners shall hand over such proof along with endorsement to the concerned Court.

h) It shall be total discretion of the petitioners to choose between surety bonds and fixed deposits. It shall also be open for the petitioners to apply for

substitution of fixed deposit with surety bonds and vice-versa.

i) 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). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC,

1973, or until discharged by substitution as the case may be.

13. 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 petitioners to execute a bond for attendance in the concerned Court(s). Once the trial begins, the petitioners shall not, in any manner, try to

delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an

appeal, on this very bond, the petitioners also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioners along with the phone number(s),

WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioners shall

immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers,

WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioners 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.

d) The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the

investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail.

Whenever the investigation occurs within the police premises, the petitioners shall not be called before 8 AM and shall be let off before 5 PM, and

shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of

summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any).

[Honâble 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]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioners fail to appear before the Court on the specified date, in that eventuality, the concerned Court may issueailable warrants.

iii. Finally, if the petitioners still fail to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the petitionersâ?? presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

14. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

15. In case the petitioners find 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 petitioners may file a reasoned application before this Court, and after taking cognizance, even to 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.

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

17. 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 and the victim, at the earliest. In case the victim notices stalking or any violation of this order, she may either inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

18. 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.

19. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

20. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

The petition stands allowed in the terms mentioned above.

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