

(2021) 02 SHI CK 0173

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 154 Of 2021

Sonia Rana

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 0173

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Jiya Lal Bhardwaj, Ashok Sharma, Anil Jaswal, Somesh Raj, Svaneel Jaswal

Final Decision : ?Allowed

Judgement

Anoop Chitkara, J

1. For cheating and concocting the documents, the petitioner apprehending arrest came up before this Court under Section 438 CrPC, seeking anticipatory bail.

2. A perusal of the petition reveals that the petitioner 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. The bail petition is silent about criminal history, however, Mr. Jia Lal Bhardwaj, Ld. Counsel for the bail petitioner states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed

was more than three years. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are of cheating, tampering and concocting the documents. Based on these allegations, the Police

registered the FIR mentioned above. Learned Additional Advocate General has placed on record the status report, which reveals that one Computer

was seized from the house of one of the accused and they would be sending the same to Forensic Science Laboratory.

5. Ld. Counsel for the petitioner contends that during interim bail, the petitioner joined the investigation, and custodial investigation would serve no

purpose whatsoever. The incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to

very stringent conditions.

REASONING:

7. Given the explanation given by learned counsel for the petitioner in Paragraphs No.2, 3 and 4, which is supported by an affidavit and the fact that

petitioner had joined investigation, coupled with the fact that they have joined the investigation, there is no justification for custodial interrogation. In the

facts and circumstances peculiar to this case, the petitioner makes out a case for release on bail.

8. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can

be taken care of by imposing elaborative and stringent conditions. In *Sushila Aggarwal*, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that

unusually, subject to the evidence produced, the Courts can impose restrictive conditions. In *Sumit Mehta v. State of N.C.T. of Delhi*, (2013)15 SCC

570, Para 11, Supreme Court holds that while exercising power Under Section 438 of the Code, the Court is duty-bound to strike a balance between

the individual's right to personal freedom and the right of investigation of the police. While exercising utmost restraint, the Court can impose conditions

countenancing its object as permissible under the law to ensure an uninterrupted and unhampered investigation.

9. Given the above reasoning, coupled with the peculiar facts and circumstances

of the case, 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.

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 petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR 25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Investigator. Before accepting the sureties, the

Attesting Officer must satisfy that in case the accused fails 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 petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-), made in favour of ""Chief Judicial Magistrate, District Una, 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 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 petitioner or his 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 petitioner shall hand over such proof along with endorsement to the concerned Court.

h) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner 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 petitioner to execute a bond for attendance in the concerned Court(s). Once the trial begins, the petitioner 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 petitioner 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 petitioner 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 petitioner 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 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.

d) The petitioner 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 petitioner 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).

[Honâ??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]:

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

ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.

iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the

petitioner's 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. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates

any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise,

the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

15. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of

this bail order, in vernacular and if not feasible, in Hindi.

16. 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 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.

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

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 Petitioner 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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