

(2022) 08 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1768, 1770 Of 2022

Tolu Ram And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 16-08-2022

Acts Referred:

Citation : (2022) 08 SHI CK 0035

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Sudhir Bhatnagar, Sunny Dhatwalia, S.K. Banyal

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Since all the bail petitions arise out of same FIR, they were being heard together and are being disposed of vide this common order.

2. Sequel to orders dated 8.8.2022, whereby bail petitioners were ordered to be enlarged on bail, in the event of arrest in FIR No. 33, dated 31.3.2022, under S.18 of the Narcotic Drugs & Psychotropic Substances Act registered at Police Station Padhar, District Mandi, Himachal Pradesh, respondent-State has filed status report and the Investigating Officer has come present with record. Record perused and returned.

3. While fairly admitting the factum with regard to joining of investigation by bail petitioners in terms of order dated 8.8.2022, Mr. Sudhir Bhatnagar, learned Additional Advocate General submits that though nothing remains to be recovered from bail petitioners but keeping in view gravity of offence alleged to have been committed by the bail petitioners, they do not deserve leniency and their prayer for bail deserves outright rejection. Mr. Guleria further submits that it may not be in the interests of justice to enlarge the bail petitioners on bail, because in that event they may not only flee from justice but may also tamper

with prosecution evidence.

4. Though, the case at hand is to be decided by learned court below in the totality of evidence led on record by Investigating Agency but having taken note of the fact that the bail petitioners have made themselves available for investigation in terms of order dated 8.8.2022 coupled with the fact that nothing remains to be recovered from the bail petitioners, prayer made by the bail petitioners for grant of bail, deserves consideration. Apprehension expressed by of learned Additional Advocate General that in the event of the bail petitioners being enlarged on bail, they may flee from justice, can be best met by putting the bail petitioners to stringent conditions.

5. 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. In the case at hand, complicity, if any, of the bail petitioners is yet to be established on record by the investigating agency, as such, this Court sees no reason to let the bail petitioners incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from them.

6. 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.

7. In Manoranjana Singh 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.

8. 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.

9. In view of above, bail petitioners have carved out a case for themselves, as such, present petitions are allowed. Orders dated 8.8.2022 passed in all the petitions are made absolute, subject to the bail petitioners furnishing bail bonds in the sum of Rs.50,000/- each with one local surety in the like amount to the satisfaction of the learned trial Court, 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.

10. It is clarified that if the 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.

11. 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 these petitions alone. The petitions stand accordingly disposed of.

Copy Dasti.