
(2018) 05 SHI CK 0026
In the High Court Of Himachal Pradesh
Case No : CrMP(M) No. 652 of 2018

Vyaso Ram

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164
Constitution of India — Article 21

Citation : (2018) 2 ShimLC 679

Hon'ble Judges : SANDEEP SHARMA

Bench : Single Bench

Advocate : Vijay Chaudhary, S.C. Sharma, Dinesh??Thakur, Amit??Kumar

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J.

1.By way of instant bail petition filed under Section 439 CrPC, prayer has been made for grant of regular bail in case FIR No. 103/17 dated 26.9.2017

under Sections 354-A and 376C(3) IPC and Sections 6 and 10 of Protection of Children from Sexual Offences Act, registered at Police Station, Tissa,

District Chamba, Himachal Pradesh.

2. Sequel to order dated 25.5.2018, ASI Subhash Kumar, has come present with the record. Mr. Dinesh Thakur, learned Additional Advocate General

has also placed on record status report, prepared on the basis of investigation carried out by the investigating agency. Record perused and returned.

3. Facts as emerge from the record/status report are that on 26.9.2017, Chairperson, Child Welfare Committee, Chamba, District Chamba, Himachal

Pradesh and District Child Protection Officer, Chamba, filed a complaint to the Superintendent of Police, Chamba, District Chamba, Himachal

Pradesh, alleging therein sexual harassment of children/inmates staying in Child Care Institution, Tissa at Chilli District Chamba, Himachal Pradesh.

Above noted complainants alleged that it has come to the notice of the Child Welfare Committee and District Child Protection Unit that there is

apprehension of offences being committed by the staff members of Child Care Institution, Tissa at Chilli, upon the children,/inmates staying therein.

On the basis of aforesaid complaint, police carried out investigation and FIR detailed herein above came to be lodged against the present bail petitioner

and other accused namely Mahinder Kumar, Tek Chand and Jagdish Chand, who at the relevant time were rendering their services as Cook, Safai

Karamchari and House Keeper, respectively. All the persons named herein above including bail petitioner are behind the bars since 27.9.2017.

4. Five girls, who were residing at Child Care Institution, Tissa at Chilli in their statements before the Magistrate, recorded under

Section 164 CrPC had alleged that the accused named herein above not only behaved indecently with them but on many occasions tried to touch their

private parts. One of the prosecutrices also alleged that accused namely Mahinder Kumar tried to outrage her modesty and sexually assault her

against her wishes. It may be noticed here that the present bail petitioner had approached this Court earlier by way of CrMP(M) No. 1596 of 2017 for

grant of regular bail, however, same came to be dismissed as withdrawn vide order dated 16.1.2018 (Annexure P-2).

5. Mr. Vijay Chaudhary, learned counsel representing the petitioner, while placing on record copies of statements made by the prosecutrices, (five in

number) before the trial court, strenuously argued that no case is made out against the bail petitioner because all the prosecutrices have resiled from

their statements and have categorically stated before the trial court that none of the accused including present bail petitioner had ever behaved

indecently or ever tried to outrage their modesty.

6. Mr. Dinesh Thakur, learned Additional Advocate General, after having perused the copies of statements made available to this Court, fairly

admitted the factum with regard to recording of statements placed on record of the court file. Mr. Thakur, on the instructions of the Investigating

Officer, who is present in the court, fairly admitted that all the prosecutrices have resiled from their statements and have denied the allegations

contained in the FIR. Though, as per FIR, six girls had levelled allegations against the accused including present bail petitioner, but statements of five prosecutrices have been recorded before the Court.

7. Mr. Vijay Chaudhary, learned counsel representing the bail petitioner, while referring to the record, especially order dated 11.4.2018, passed by trial

Court, contended that since sixth prosecutrix being mentally retarded was not able to make statement before the Court, her statement was not

recorded. Mr. Chaudhary, also placed on record opinion rendered by the medical board constituted by the Court to suggest that sixth prosecutrix is

suffering from moderate mental retardation (ICD-10 F71, mental age from 6 to under 9 years) with disability of seventy two percent (72%) permanent

in nature.

8. Having carefully perused the statements made by five prosecutrices before the trial court, this Court finds considerable force in the arguments of

the learned counsel representing the bail petitioner that no case is made out against the bail petitioner and other accused named in the FIR. Though

these prosecutrices were declared hostile, but even in their cross-examination, nothing material could be elicited and as such, this Court is persuaded to

agree with the contentions of the learned counsel representing the bail petitioner that there is very remote/bleak possibility of conviction as far as

accused named in the FIR are concerned.

9. Interestingly, all the prosecutrices have categorically stated that they had not levelled any allegations against the bail petitioner and other accused,

rather they were compelled by the Child Helpline Chamba to file complaint against accused including present bail petitioner. When prosecutrices were

confronted with the statements made by them before the Magistrate under Section 164 CrPC, they categorically stated that they had made false

statements before the Magistrate, on the askance of Child Helpline, Chamba. Further perusal of status report made available to this Court suggests

that medical evidence adduced on record nowhere indicates sexual assault, if any, committed upon the prosecutrices by the accused named in the

FIR.

10. Though, aforesaid aspects of the matter are to be considered and decided by the trial Court below on the basis of entire evidence adduced on

record by the prosecution, but having carefully perused the statements having

been made by the prosecutrixes, this Court sees no reason to keep the bail petitioner behind bars for indefinite period, especially when guilt of the accused is yet to be proved by the prosecution by leading cogent and convincing evidence.

11. Hon'ble Apex Court in *Ranjitsingh Brahmajeetsing Sharma v. State of Maharashtra* (2005) 5 SCC 294, while dealing with case registered under

Maharashtra Control of Organised Crime Act, 1999 (MCOCA), which also contains stringent provisions, has categorically held that if the Court,

having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be

passed. It has been held as under: ¶38. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be

pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an

order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed

to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even

likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute,

it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the

culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of

considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every

little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non

for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of

this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary

proceedings but may not attract a penal provision.¶¶

12. 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 guilt has not been 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.

13. By now it is well settled that gravity alone cannot be 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.â??

14. In *Manoranjana Sinh alias Gupta versus CBI*, (2017) 5 SCC 218, Hon'ble Apex Court has held as under: â??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.â??

15. 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.

16. 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.

17. In view of above, present bail petition is allowed. Petitioner is ordered to be enlarged on bail subject to his furnishing bail bonds in the sum of

Rs.1,00,000/- (Rs. One Lakh) with one local surety in the like amount, to the satisfaction of the learned trial Court, besides 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.

(e) He shall surrender passport, if any, held by him.

18. It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

19. 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 instant petition alone.

The petition stand accordingly disposed of. Copy dasti.