IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.MP(M)No. 1982 of 2020

Date of Decision: 18.12.2020

Abhilash alias Abbu .....Petitioner.

Versus

State of Himachal Pradesh .....Respondent.

Coram:

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Sunil Kumar, Advocate, through video-conferencing.

For the Respondent: Mr. Arvind Sharma, Additional Advocate General, through video-conferencing.

Sandeep Sharma, J (oral)

Bail petitioner namely, Abhilash alias Abbu, who is behind the bars since 30.8.2020, has approached this Court in the instant proceedings filed under Section 439 of the Code of Criminal Procedure, praying therein for grant of regular bail in case FIR No.16/2020, dated 1.4.2020, under Sections 21 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (***For short ' Act'),*** registered at police Station, Kotkhai, District Shimla, Himachal Pradesh.

---

[1] Whether reporters of the local papers may be allowed to see the judgment?

2. Perusal of status report filed by the respondent-State in terms of order dated 9.11.2020, reveals that on 1.4.2020, police stopped car bearing registration No. HP-62-C-1205 being driven by co-accused namely, Tapan Thakur and enquired that why vehicle is being plied during curfew time, but since driver and other occupants of the car got perplexed after having seen the police, police deemed it necessary to cause their personal search. All the occupants of the vehicle save and except present bail petitioner Abhilash alias Abbu were detained at the spot but allegedly present bail petitioner fled away from the spot. Police conducted personal search as well as search of the car and allegedly recovered 9.50 grams heroin (Chitta) from one box near gear lever of the car. Since, the occupants of the car failed to render plausible explanation qua the possession of aforesaid quantity of contraband, police after completion of necessary codal formalities, lodged a FIR, detailed hereinabove, against them. All the co-accused namely, Tapan Thakur, Virender Thakur and Raman Chauhan already stand enlarged on bail in terms of the order passed by learned Sessions Judge, Shimla, H.P.

3. As per the status report, all the co-accused during their investigation revealed that they alongwith present bail petitioner had purchased aforesaid quantity of contraband

from some unknown person, whereabouts of him are known. Police arrested the present bail petitioner on 29.8.2020 and since then he is behind the bars. Status report reveals that challan stands filed in the competent court of law on 28th September, 2020.

4. Mr. Arvind Sharma, learned Additional Advocate General while fairly admitting the factum with regard to filing of the challan in the competent Court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of the offence alleged to have been committed by him coupled with the fact that he had fled away from the spot, prayer having been made on his behalf for grant of bail deserves outright rejection. Mr. Sharma, further submits that though nothing remains to be recovered from the bail petitioner, but since there is overwhelming evidence available on record that present bail petitioner in connivance with other co-accused had purchased aforesaid quantity of contraband from some unknown person, there is reason to believe that the present bail petitioner alongwith other co-accused had been indulging in illegal trade of narcotics and in the event of his being enlarged on bail, he may again indulge in these activities.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that the present bail petitioner was one of the occupant of the car bearing No.HP-62-C-1205, which was stopped by the police on the date of alleged incident for checking. This Court further finds that police allegedly recovered 9.50 grams of heroin from the car and as such, submissions made by learned counsel for the petitioner cannot be accepted that the petitioner has been falsely implicated in the case. Besides above, status report clearly reveals that bail petitioner after having seen the police succeeded to flee from the spot and absconded till his arrest on 28th August, 2020.

6. True, it is that bail petitioner alongwith other co-accused have committed serious offence having adverse impact on the society, but keeping in view the fact that he is first offender and is young man of 28 years, there appears to be no justification to keep him behind the bars for indefinite period during the trial, especially when other co-accused already stand already enlarged on bail. Otherwise also, intermediate quantity of contraband was not recovered from the conscious possession of the bail petitioner, rather same was recovered from the car being driven by co-accused Tapan Thakur, who otherwise already stands enlarged on bail. Complicity, if any,

of bail petitioner in the alleged commission of offence is yet to be established on record by leading cogent and convincing evidence. Since intermediate quantity i.e.9.50 grams of heroin came to be recovered from the car in question, rigour of section 37 are not attracted in the present case.

7. It has been informed that bail petitioner is suffering from jaundice and is being treated in jail and as such, prayer made on behalf of the petitioner deserves to be considered on sympathetic ground. There is no material, worth credence, available on record suggestive of the fact that prior to registration of the case at hand, petitioner had been indulging illegal activities and as such, he deserves to be given one chance to rectify his mistake.

8. Mr. Sunil Kumar, learned counsel representing the petitioner while seeking bail has assured this Court that necessary steps would be taken by the parents of the bail petitioner to take him to some rehabilitation centre, so that efforts are made for bringing the bail petitioner to the main stream and as such, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period during the trial.

9. It has been repeatedly held by Hon'ble Apex Court as well as this Court in catena of cases that one is deemed to

be innocent till the time his /her guilt is not proved, in accordance with law. Since guilt, if any, of the bail petitioner is yet to be proved, in accordance with law by the prosecution by leading cogent and convincing evidence, this Court sees no reason to curtail the freedom of the bail petitioner for indefinite period during the trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice or may again indulge in such activities, can be best met by putting bail petitioner to stringent conditions.

10. 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 categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court

further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced 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.***
>
> ***3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.***
>
> ***4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or***

influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in In Re-Inhuman Conditions in 1382 Prisons

11. The Hon'ble Apex Court in ***Sanjay Chandra versus Central Bureau of Investigation*** **(**2012)1 Supreme Court Cases 49; 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."***

12. 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. 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.

13. 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.

14. In view of above, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bonds in the sum of Rs.1.00 Lakh with one local surety in the like amount each to the satisfaction of the learned trial Court/ Magistrate available at the station with 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.

15. 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.

16. 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 application alone.

The petition stands accordingly disposed of.

(Sandeep Sharma),
Judge

December 18,2020
(shankar)