IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2200 of 2020

Decided on: 15.12.2020

Gopal Singh **...Petitioner.**

Versus

State of Himachal Pradesh **...Respondent.**

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1] *No*

For the petitioner: Mr. Lovneesh Thakur, Advocate.

For the respondent: Mr. Nand Lal Thakur, Additional Advocate General with Mr. Ram Lal Thakur, Dy.AG and Mr. Rajat Chauhan,

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COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge.

A boy aged 20 years, who is apprehending his arrest on the suspicion of impregnating a girl aged 17 years, who subsequently gave birth to a male child and had come up before this Court seeking interim bail on 14.12.2020, this Court had given interim protection and called for the status report. Today, status report stands filed.

2. I have gone through the status report and heard learned counsel for the parties.

3. Mr. Nand Lal Thakur, learned Additional Advocate General, on instructions, states that the victim had initially alleged rape against one Chhape Ram aged 45 years. After that, the police had arrested him and obtained blood sample for DNA profile. Subsequently, when the chemical material, obtained from the victim, child and said Chappe Ram, was sent for testing, then, the paternity of Chappe Ram did not match.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

4. After that, the investigator conducted fresh investigation and took the victim for recording of his supplementary statement under Section 161, Cr.PC. This was done on the basis of the investigation, which pointed out the involvement of two more persons, namely, Khem Raj and Gopal Singh, petitioner, herein. Learned Additional Advocate General further submits that the investigation qua the involvement of Khem Raj and Gopal Singh is at very initial stage and even if this Court is inclined to grant bail, then it should be subject to the condition that in case the DNA profile obtained from the petitioner matches with the DNA profile of the child, then the State should be at liberty to seek cancellation of the interim protection.

5. Mr. Lovneesh Thakur, learned counsel for the petitioner submits that the victim is on spree to name innocent people probably to save somebody, who is very close to her. He further contends that the victim, who is minor and gave birth to a child is evident. The question arises that initially she named Chhape Ram, who was absolved by the laboratory and now, she has named the petitioner also to save the real culprit. Learned counsel for the petitioner, on instructions, submits that the petitioner would volunteer to give his blood sample, saliva sample or whatever sample is required by the investigator and the doctor for DNA profile to match the same with the child. He, on instructions, further submits that he shall fully co-operate with the investigation of the case and would not stalk or harass the victim**.**

ANALYSIS AND REASONING:

6. In **Gurbaksh Singh Sibbia and others v. State of Punjab**, 1980 (2) SCC 565, (Para 30), a Constitutional bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing requires, and

a change in the fact situation. In **State of Rajasthan, Jaipur v. Balchand**, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In **Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh**, (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours release unless countered by the negative criteria necessitating that course. In **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

7. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

8. Given above, the analyses of the history of the previous accusation of the petitioner where paternity of the child was not proved, the possibility of truthfulness in the arguments of Mr. Lovneesh Thakur is there**.**

9. As such, the petition is allowed subject to the condition that he shall accompany the investigator to the doctor of giving his blood sample, saliva sample and whatever material would be required for DNA comparing. Such direction is

issued because learned counsel for the petitioner has voluntarily offered to do so**.** On the receipt of DNA from the laboratory, in case the petitioner is found to be the father of the child, then investigator shall file an application for cancellation of the bail, before this Court.

10. An analysis of entire evidence does not justify incarceration of the accused, nor is going to achieve any significant purpose. Without commenting on the merits of the case, the stage of the investigation and the period of incarceration already undergone would make out a case for bail.

11. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative conditions 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.

12. Given the above reasoning, 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.

13. Following the decision of this Court in **Manish Lal Shrivastava v. State of Himachal Pradesh,** Cr.MP(M) No. 1734 of 2020, decided on 1st Dec 2020, the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. One ten thousand (INR 10,000/-), and shall either furnish one surety of a similar amount, both of whom, in case of default from putting in an appearance, can produce the accused before the Court to the satisfaction of the Judicial Magistrate, Mandi/ Chief Judicial Magistrate, District Mandi, HP/ or any other Judicial magistrate of District Mandi, HP **or** the aforesaid personal bond and fixed deposit(s) for Rs. Ten thousand only (INR 10,000/-), made in favour of "Chief Judicial Magistrate, District Mandi, H.P.", 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. The arresting officer shall give a time of ten working days to enable the accused to prepare a fixed deposit. Such a fixed deposit need not necessarily be made from the account of the petitioner. If such a fixed deposit is made

on paper, then the original receipt shall be handed over to the arresting officer. 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. The petitioner or his Advocate shall inform at the earliest, either by e-mail or by post/courier, the concerned branch of the bank about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number, that it has been tendered as surety. After that he shall hand over such proof along with endorsement to the Investigator. 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. 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 Officer shall have a lien over the deposits until discharged by substitution, and in case any Court takes cognizance then such Court, upon which the investigator shall hand over the deposit to such Court, which shall have a lien over it up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or as the case may be. 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 give security to the concerned Court(s) for attendance. Once the trial begins, the petitioner shall not, in any manner, try to delay the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted, and in case of appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.

b) The attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

c) The petitioner shall join investigation as and when called by the Investigating Officer or any Superior Officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5 PM. The

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

d) The petitioner shall cooperate with the investigation at all further stages as may be required, and in the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail granted by the present order.

e) 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.

f) Once the trial begins, the petitioner shall not in any manner try to delay the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted.

g) In addition to standard modes of processing service of summons, the concerned Court may serve the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'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].

h) The concerned Court may also inform the accused about the issuance of bailable and non-bailable warrants through the modes mentioned above.

i) In the first instance, the Court shall issue summons and may send such summons through SMS/ WhatsApp message/ E-Mail.

j) In case the petitioner fails to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioner about such Bailable Warrants through SMS/ WhatsApp message/ E-Mail.

k) Finally, if the petitioner still fails to put in an appearance, then the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

l) In case of non-appearance, then irrespective of the contents of the bail

bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner alone and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

m) The petitioner shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within thirty days from such modification, to the Police Station of this FIR, and also to the concerned Court.

n) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioner. Otherwise, the bail bonds shall continue to remain in force throughout the trial and also after that in terms of Section 437-A of the CrPC.

o) It is further clarified that he shall not stalk or harass or follow the victim and in case he does so, then on this ground alone, the protection shall be cancelled ipso facto.

14. The learned Counsel representing the accused and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order to the petitioner, in vernacular and if not feasible, in Hindi or English.

15. 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 before 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 in accordance with law.

17 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.

18. 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 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 write to the Trial Court or even to this Court.

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

The petition stands allowed in the terms mentioned above.

Authenticated copy.

(Anoop Chitkara),
Judge.

15th December, 2020 (mamta)