IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No2252 of 2020
Decided on: 29.12.2020

Balbir Singh …….. Petitioner

Versus

State of Himachal Pradesh …..Respondent

Coram:
Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? [1] Yes

For the petitioner: Mr. Sanjeev Kumar Suri, Advocate, through Video-conferencing.

For the respondent: Mr. Sudhir Bhatnagar, Additional Advocate General, through video-conferencing.

Sandeep Sharma, Judge (oral):

Sequel to order dated 22.12.2020, whereby bail petitioner was ordered to be enlarged on interim bail in the event of his arrest in case FIR No.108/2020, dated 19.12.2020, under section 306 of IPC, registered at police Chowki Jol, District Una, Himachal Pradesh, respondent-State has placed on record status report prepared on the basis of the investigation carried out by the Investigating Agency.

2. Perusal of status report/record reveals that on 19.12.2020, complainant Prem Lal, who happened to be father of deceased Kanta Devi, got his statement recorded under Section 154

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

Cr.P.C, alleging therein that the marriage of his deceased daughter Kanta alias Banita was solemnized in the year, 2000 i.e. 20 years back, with the present bail petitioner and out of their wedlock two children were born. Complainant alleged that his deceased daughter was constantly harassed and tortured by her husband i.e. present bail petitioner. He alleged that he himself alongwith other family members had gone to the matrimonial house of his daughter, but present bail petitioner not only maltreated him, rather gave him beatings and as such, he was compelled to take shelter in nearby house. He alleged that his daughter has expired on 26.11.2020 after having consumed poison and as such, appropriate action, in accordance with law, be taken against the present bail petitioner, who happened to be husband of deceased daughter of the complainant.

3. Mr. Sudhir Bhatnagar, learned Additional Advocate General while fairly admitting the factum with regard to joining of investigation by the bail petitioner pursuant to order dated 22.12.2020, contends that though bail petitioner has joined the investigation and is fully cooperating with the investigation, but keeping in view the gravity of the offence alleged to have been committed by him, prayer having been made on his behalf for grant of bail deserves outright rejection. Learned Additional Advocate

General further contends that there is overwhelming evidence collected on record by the Investigating Agency suggestive of the fact that deceased daughter of complainant consumed poison after being maltreated and harassed by the present bail petitioner and as such, there appears to be no justification to enlarge the present bail petitioner on bail because in the event of his being enlarged on bail he may tamper with the prosecution evidence.

4. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that the marriage interse deceased daughter of complainant and present bail petitioner was solemnized in the year, 2000 i.e. twenty years back and at no point of time complaint, if any, with regard to maltreatment and harassment, if any, ever came to be lodged against the present bail petitioner. As per the investigation, deceased daughter of the complainant was suffering from some mental problem and as such, was under constant treatment. Complainant himself in his statement recorded at Regional Hospital, Una disclosed to the police that his deceased daughter was suffering with mental/psyche problem and as such, he alongwith his son had gone to matrimonial house of his daughter on 21.11.2020 and had brought the deceased to their house. As per

the investigation, on 23.11.2020 complainant alongwith his wife and son had come back to the matrimonial house of the deceased daughter. On 25.11.2020, brother as well as mother of deceased went back to their place, whereas complainant stayed at the house of deceased and on 26.11.2020 he had some altercation with the present bail petitioner over the issue of treatment of deceased daughter of the complainant. On 26.11.2020, deceased daughter of complainant allegedly committed suicide by consuming poison and at that time nobody including the complainant expressed his suspicion against the bail petitioner and other family members. On 19.12.2020 i.e. after 20 days of alleged incident complainant sent a complaint through email to police station concerned alleging therein that his deceased daughter committed suicide on account of maltreatment and harassment caused by the present bail petitioner.

5. Investigation further reveals that deceased was under regular treatment from Chaudhary Hospital, Baruhi, District Una for depression and other mental health issues. Documents pertaining to the treatment collected on record clearly reveal that deceased daughter of the complainant was patient of depression. Medical Officer attending upon the deceased daughter of

complainant has also disclosed/opined to the police that deceased was suffering from depression/mental illness. On the top of everything, none of the neighbourer or relatives stated/disclosed to the police in their statements that deceased was being harassed and tortured by the bail petitioner and other family members prior to the alleged incident.

6. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence collected on record by the investigating agency, but having noticed aforesaid aspects of the matter, this Court sees no reason for the custodial interrogation of the bail petitioner, who otherwise has already made himself available for investigation in terms of order dated 22.12.2020. Investigation in the case is complete and nothing remains to be recovered from the bail petitioner and as such, there appears to be no reason to curtail the freedom of the bail petitioner for indefinite period during the trial.

7. 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. In the case at hand, the guilt, if any, of the bail petitioner is yet to be proved, in accordance with law. Apprehension

expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions, as has been fairly stated by learned counsel representing the petitioner.

8. 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.***

9. 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."***

10. 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.

11. The Hon'ble Apex Court in ***Prasanta Kumar Sarkar v. 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.

12. Consequently, in view of the above, order dated 22.12.2020 passed by this Court, is made absolute, subject to bail petitioner furnishing personal bond in the sum of Rs.50,000/- with one local surety in the like amount each, to the satisfaction of the learned trial Court, 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 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.

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

14. 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 bail petition stands disposed of accordingly.

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(Sandeep Sharma),
Judge

December 29, 2020
(shankar)