

Pradeep Kumar vs State Of Himachal Pradesh on 29 November, 2024

Author: Sandeep Sharma

Bench: Sandeep Sharma

2024:H

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No. 2549 of 2024 with
Cr.MP(M) Nos. 2551, 2581 & 2582 of 2024
Date of Decision: 29.11.2024

1. Cr. MP (M) No. 2549 of 2024

Pradeep Kumar

...Petit

Versus

State of Himachal Pradesh

...Respondent

2. Cr. MP (M) No. 2551 of 2024

Kaushal Chauhan

...Petit

Versus

State of Himachal Pradesh

...Respondent

3. Cr. MP (M) No. 2581 of 2024

Arjun Singh

...Petit

Versus

State of Himachal Pradesh

...Respondent

4. Cr. MP (M) No. 2582 of 2024

Bunty Thakur

...Petit

Versus

State of Himachal Pradesh

...Respondent

Coram:

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

Whether approved for reporting?1

For the Petitioner(s):

Mr. Ajay Kochhar, Senior Advocate
with Mr. Varun Chauhan, Mr.
Anubhav Chopra, Mr. M.S. Katoch
and Mr. Sandeep K. Pandey,

Advocates.

For the Respondent:

Mr. Rajan Kahol, Mr. Vishal
Panwar and Mr. B.C.Verma,

1

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

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Additional Advocate Generals with
Mr. Rahul Thakur, and Mr. Ravi
Chauhan, Deputy Advocate
Generals.
Mr. Prashant Chauhan, Advocate,
for the complainant.

Sandeep Sharma, J. (Oral)

Bail petitioners namely, Pradeep Kumar, Kaushal Chauhan, Arjun Singh and Bunty Thakur, who are behind the bars since 20/21.09.2024, have approached this Court in the instant proceedings filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, for grant of regular bail in case FIR No.50 of 2024, dated 25.07.2024, under Sections 127(2), 115(2), 137(2), 140(2), 351(2) and 3(5) of the Bhartiya Nyaya Sanhita, registered at police Station, Kumarsain, District Shimla, Himachal Pradesh

2. Pursuant to orders dated 18th/20th November, 2024, respondent-State has filed status report in all the cases and ASI Kartar, has come present with the record. Record perused and returned.

3. Close scrutiny of the record/status report reveals that on 25.7.2024, complainant namely, Sh. Suresh Kumar, lodged a complaint at Police Station, Kumarsain, District Shimla, Himachal Pradesh, alleging therein that on 22.7.2024, while he had come in the Court of learned Judicial Magistrate First Class, Anni, District Kullu, Himachal Pradesh for getting his statement recorded under 2024:HHC:12763 Section 313 Cr.P.C in case titled as Devinder vs. Suresh filed under section 138 of the Negotiable Instruments Act, person namely, Devender hatched conspiracy to kidnap him. Complainant alleged that above named Devender called five persons, two of whom, he knew as Kushal Chauhan and Arjun. He alleged that apprehending his kidnapping, he brought the matter to the notice of learned Judicial Magistrate First Class, Anni, District Kullu, Himachal Pradesh, who directed the police to provide security to him. He alleged that two police officials accompanied him till Luhri, but thereafter, they went away. Complainant alleged that two cars of accused namely, Kushal Chauhan and Arjun with person, namely Devender, had been chasing car being driven by his counsel namely Sh. Satpal Chauhan bearing registration No. HP- 95-0741 and at place called Sainj, they forcibly stopped the vehicle being driven by his counsel, Sh. Satpal Chauhan and kidnapped him. Complainant also alleged that, while kidnapping, accused named in the FIR, also damaged the car of his counsel and gave him beatings with sticks, stones and hands. Complainant alleged that he was forcibly made to sit in Renault Duster Car bearing registration no. HR26-B-4769. He alleged

that accused, named in the FIR, not only tied him in the car, but also constantly gave beatings to him. He further alleged that accused, named in the FIR, forcibly made him to stay at Hotel Haveli, Nirmand, District Kullu, 2024:HHC:12763 Himachal Pradesh and there got number of papers signed from him. He also alleged that, while he was in illegal confinement of accused, named in the FIR, they also compelled his sister to transfer some amount in their bank accounts. He also alleged that accused forcibly took four blank signed cheques from him. He alleged that on 24th July, 2024, accused forcibly took him to Tehsil Office, Rampur and made him to prepare and sign some agreement. He alleged that though his family members and friends kept on informing the police with regard to his kidnapping and abduction by accused, but no action was taken. In the aforesaid background, FIR, as detailed hereinabove, came to be lodged against the bail petitioners on 25.07.2024. Since investigation in the case is complete and Challan stands filed in the competent court of law, bail petitioners herein, who are behind the bars since 20.09.2024, have approached this Court for grant of regular bail.

4. While fairly admitting factum with regard to filing of the Challan in the competent Court of law, Mr. Rajan Kahol, learned Additional Advocate General, states that though nothing remains to be recovered from the bail petitioners, but keeping in view the gravity of offence alleged to have been committed by the bail petitioners, they do not deserve any leniency. Learned Additional Advocate General states that keeping in view the prior animosity inter se complainant and the accused, named in the FIR, coupled 2024:HHC:12763 with the fact that there are serious allegation of kidnapping against the bail petitioners and they have allegedly procured sign of the complainant on blank papers, it may not be in the interest of justice to enlarge them on bail because in that event, they may not only flee from justice, but may again cause harm to the complainant, who otherwise is being constantly harassed and threatened by the bail petitioners after lodging of FIR.

5. Mr. Prashant Chauhan, Advocate, who is representing the complainant, while adopting the aforesaid submissions made by learned Additional Advocate General, states that since petitioners herein are accused of their having committed offence punishable under section 140(2) of Bhartiya Nyaya Sanhita, prayer made on their behalf for grant of bail deserves outright rejection. He submits that there is ample material adduced on record by the Investigating Agency suggestive of the fact that bail petitioners herein not only tried to kidnap/abduct the complainant from the Court, but despite there being security provided by the Court, succeeded in kidnapping the complainant and as such, there is every likelihood that in the event of their being enlarged on bail, they may again cause harm to the complainant.

6. To the contrary, Mr. Ajay Kochhar, learned Senior Counsel, duly assisted by Mr. Anubhav Chopra, Mr. Varun Chauhan, Mr. M.S. Katoch and Mr. Sandeep K. Pandey, 2024:HHC:12763 Advocates, representing the bail petitioners, submits that petitioners herein have been falsely implicated because at no point of time complainant was kidnapped, rather he with a view to wriggle out from his liability to pay some amount to the person namely, Devender as well as bail petitioner Kushal has concocted a false story. While making this Court peruse status report, Mr. Kochhar, learned Senior counsel representing the petitioners, contends that alleged incident happened on 22.07.2024, whereas FIR came to be lodged on 25.07.2024. Mr. Kochhar, further states that though it is an admitted case of the complainant that, while he was allegedly kidnapped by the accused,

named in the FIR, Advocate namely, Mr. Satpal Chauhan was with him, who had knowledge of kidnapping, if any, by the accused, but there is no explanation that why above named counsel failed to lodge the report at Police Station concerned immediately at first instance. Mr. Kochhar, submits that entire story of kidnapping has been cooked up to defeat the rightful claim of person namely, Devender Kumar and bail petitioners, to whom complainant admittedly owes considerable amount.

7. Having heard learned counsel for the parties and perused material available on record, this Court finds that on 22.07.2024, complainant namely, Suresh Kumar had come present before learned Judicial Magistrate, First Class, Anni for getting his 2024:HHC:12763 statement recorded under Section 313 Cr.P.C in a case lodged against him at the behest of person namely Devender. Since afore case was filed under Section 138 of the Negotiable Instruments Act, there is a reason to presume that complainant though had issued cheque to above named Devender for discharge of his lawful liability, but same was dishonoured on account of insufficient funds in the account of the complainant. No doubt, status report reveals that on that date of alleged incident, learned Judicial Magistrate, First Class, having taken note of apprehension expressed by the complainant Suresh Kumar, directed two police officials to accompany him, but neither such order has been placed on record nor statements of police officials, who had allegedly accompanied the complainant have been recorded. Moreover, there is nothing on record to suggest that protection, if any, provided by the court concerned was upto place called Luhri, thereafter admittedly police officials left the company of the complainant as well as his counsel, Sh. Satpal Chauhan. As per own case of complainant when he alongwith his advocate Sh. Satpal Chauhan reached Sainj, accused forcibly stopped the vehicle being driven by Sh. Satpal Chauhan and thereafter kidnapped him. Since it is not in dispute that advocate named hereinabove was not kidnapped/abducted by the accused, named in the FIR, and factum, if any, of kidnapping of complainant was in 2024:HHC:12763 his knowledge, it is not understood why above named person failed to lodge the FIR at first instance. Interestingly, as per the statement of the complainant, accused while kidnapping him had damaged the vehicle of Sh. Satpal Chauhan, if it is so, there was all the more reason for Sh. Satpal Chauhan to report the matter to the police, which he failed.

8. Similarly, this Court finds that as per own statement of the complainant he remained in the company of the accused for more than two days and during this period he had sufficient time to either report the matter to the police or owner of the Hotel where he was allegedly confined. Most importantly, complainant was allegedly taken by the accused to the Tehsil Office, Rampur for preparing some agreement, but even at that stage, no attempt, if any, ever came to be made by the complainant to lodge the report with regard to his kidnapping and abduction to the Tehsildar or any Officer present in the Tehsil. Had complainant raised hue and cry in the Tehsil Office, definitely prompt action, if any, would have been taken by the official present therein. It is only after execution of certain documents, which were allegedly prepared in the Tehsil office, complainant lodged FIR, as detailed hereinabove, that too after three days of his alleged kidnapping/ abduction.

9. Though, Mr. Prashant Chauhan, learned counsel representing the complainant attempted to argue that since 2024:HHC:12763 complainant was in continuous illegal confinement of accused, there was no occasion for him to lodge the complaint, but such submission of him deserves outright rejection for the reason that during his alleged stay with the accused for three days, complainant had

sufficient opportunity to report the matter to the police or his family members. Though, it came to be argued by Mr. Prashant Chauhan, Advocate that family members of the complainant kept on making complaints to police with regard to his kidnapping and confinement, but there is no record that complaint, if any, ever came to be lodged by the family member of the complainant, who allegedly on the askance of the accused also transferred some amount in the bank account of the accused.

10. Though, Sh. Prashant Chauhan, learned counsel vehemently argued that since a case under Section 140(2) of Bhartiya Nyaya Sanhita is registered against the bail petitioners, prayer made on their behalf for grant of bail deserves outright rejection, but having perused medical evidence adduced on record, this Court has its own doubt whether petitioners herein could be booked under aforesaid provision of law because medical evidence adduced on record nowhere suggest that injuries, be it internal or external, ever came to be suffered by the complainant, rather he was found to be hale and hearty. Moreover, story of obtaining blank cheques after his being kidnapped, appears to be 2024:HHC:12763 untrustworthy for the reason that prior to alleged incident litigation was already going on inter se complainant and person namely Devender on account of non-payment of certain dues.

11. Very interestingly person namely, Devender at whose instance entire conspiracy to kidnap/abduct the complainant was allegedly hatched never came to be arrayed as an accused. Save and except allegation of hatching conspiracy, not even a word came to be whispered against Devender with regard to his having hired accused, named in the FIR, for kidnapping/abducting the complainant.

12. Medical evidence adduced on record falsifies the claim of the complainant that he was given merciless beatings by the accused with sticks, stones and fist blows. Similarly, there is nothing on record to prove damage to the vehicle of the advocate Sh. Satpal Chauhan allegedly caused by the accused. Advocate namely Sh. Satpal Chauhan, while getting his statement recorded on 5th August, 2024 though stated that accused named in the FIR forcibly kidnapped/abducted complainant Suresh Kumar, but he nowhere specifically stated anything with regard to damage, if any, caused to his vehicle as well as beatings given to the complainant Suresh Kumar.

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13. Though, case at hand shall be decided by learned trial Court in totality of evidence be it ocular or documentary adduced on record by the prosecution as well as accused, but having taken note of aforesaid glaring aspects of the matter, this Court sees no reason to curtail the freedom of the bail petitioners for an indefinite period during the trial, especially when nothing remains to be recovered from them. Bail petitioners have already suffered for more than 70 days and further incarceration, if permitted during trial, would definitely amount to pre-trial conviction, which is wholly impermissible.

14. Hon'ble Apex Court as well as this Court has held 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 in the case at hand

guilt, if any, of the bail petitioners is yet to be established on record by leading cogent and convincing evidence, there appears to be no justification to curtail the freedom of the bail petitioners for an indefinite period during trial, conclusion whereof may take considerable time. Apprehension expressed by learned Additional Advocate General as well as learned counsel representing the complainant that in the event of bail petitioners being enlarged on bail, they may not only flee from justice, but may again cause harm to the complainant, can be best met by putting bail petitioners to stringent conditions.

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15. 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 cannot be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

16. 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.

17. 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 2024:HHC:12763 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.

18. 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.

19. In view of above, bail petitioners have carved out a case for themselves, as such, present petitions are allowed. Bail petitioners are ordered to be enlarged on bail, subject to their furnishing bail bonds in the sum of Rs.2,00,000/- each with two local sureties in the like amount each, 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 2024:HHC:12763

(d) They shall not leave the territory of India without the prior permission of the Court.

20. 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.

21. 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.

A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioners and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

(Sandeep Sharma) Judge November 29, 2024 (shankar)