
vs State Of Himachal Pradesh on 3 January, 2020

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr. MP(M) No. 2424 of 2019

Date of Decision: 3.1.2020

Hasan Deen

..... Petitioner

State of Himachal Pradesh

Versus
.....Respondent.

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1

For the Petitioner:

Mr. N.K.Thakur, Senior Advocate

with Mr. Divya Raj Singh, Advocate.

For the Respondent: Mr. Arvind Sharma, Additional Advocate

General with Mr. Kunal Thakur, Deputy

Advocate General.

Sandeep Sharma, Judge (oral):

Bail petitioner namely, Hasan Deen, who is behind the bars since 11.12.2019, 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.262/19, dated 8.10.2019, under Section 363, 366A, 342, 452, 120B of IPC, registered at police Station, Sadar, District Chamba, Himachal Pradesh.

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

2. Pursuant to order dated 24.12.2019, SI Gobind Paul has come present alongwith the record. Mr. Arvind .

Sharma, learned Additional General has also placed on record status report, prepared on the basis of the investigation carried out by the Investigating Agency. Record perused and returned.

3. Record/status report made available to this Court reveals that on 8.10.2019, complainant Sultan Mohammad got his statement recorded under Section 154 Cr.P.C., alleging therein that his minor daughter aged 14 years (hereinafter victim/prosecutrix, name withheld to protect her identity), has gone missing from the house of her grand mother. He alleged that on the date of alleged incident, his minor son and victim/prosecutrix were sleeping with their grand mother in one room in a separate house at a distance of 100 meters. In the intervening night of 7 th/8th.10.2019, at about 4:00 AM son of the complainant informed him that some unknown persons entered the house and forcibly took away his sister i.e. victim/prosecutrix. He alleged that his mother namely, Hasan Bibi lateron informed him that at 2:00 AM in the night person namely, Rustam alias Kalu alongwith bail petitioner, who happened to be brother in law (Jija) of main accused unauthorizedly entered in the room and kidnapped .

the victim/prosecutrix. In the aforesaid background, FIR as detailed hereinabove, came to be lodged against the present bail petitioner alongwith other co accused. Main accused namely, Rustam alias Kalu is absconding, whereas two other accused namely, Yusuf and Roshan stand enlarged on bail.

Present bail petitioner alongwith other co accused namely, Mohammad Husain and Karam Deen, are behind the bars.

4. Mr. Arvind Sharma, learned Additional Advocate General on the instructions of the Investigating Officer, who is present in Court, while fairly acknowledging the factum with regard to completion of the investigation, contended that challan is likely to be filed shortly and nothing remains to be recovered from the present bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency and as such, prayer made on his behalf may be rejected. Mr. Sharma, further contended that as per the material available on record present bail petitioner though has not committed any offence punishable under Section 376 of IPC, but he participated actively in kidnapping the victim/prosecutrix, who is minor. Mr. Sharma, contended that since main accused is absconding, it may not .

be in the interest of justice to release the present bail petitioner on bail at this stage.

5. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that on the date of alleged incident victim/ prosecutrix was sleeping in the room of her grand mother in a separate house from where she was allegedly kidnapped by the main accused Rustam alias Kalu with the help and aid of the present bail petitioner. Careful perusal of statement of the victim/prosecutrix recorded under Section 164 Cr.P.C., clearly reveals that she had been meeting and talking with the main accused Rustam alias Kalu for quite considerable time. It also emerge from the aforesaid statement made by the victim/prosecutrix that they both i.e. the main accused namely, Rustam alias Kalu and the victim/prosecutrix wanted to solemnize marriage. Victim/prosecutrix in her statement recorded under Section 164 Cr.P.C., has reiterated that she would solemnize marriage with the main accused namely, Rustam alias Kalu after having attained majority. If the statement made by the victim/prosecutrix is read in its entirety vis-à-vis initial version put forth by the complainant .

while getting his statement recorded under Section 154 Cr.P.C, there appears to be considerable force in the arguments of learned counsel representing the bail petitioner that there are material contradictions and inconsistencies.

Complainant in his initial statement given under Section 154 Cr.P.C., stated that the main accused Rustam alias Kalu alongwith present bail petitioner and other two persons unauthorizedly entered the room where allegedly victim/ prosecutrix was sleeping with her grand mother and brother and then kidnapped the victim/prosecutrix, but victim /prosecutrix in her statement recorded under Section 164 Cr.P.C., stated that on the date of alleged incident main accused Rustam alias Kalu after entering the room called her outside and took her alongwith him with the help and aid of the present bail petitioner. Even though perusal of statement of victim/prosecutrix recorded under Section 164 Cr.P.C., nowhere suggests that she even was subjected to forcible sexual intercourse by the main accused Rustam alias Kalu, but definitely there is nothing in the statement of the prosecutrix, from which it can be inferred that present bail petitioner made an attempt to cause harm in any manner to .

the victim/prosecutrix. No doubt, statement of victim/prosecutrix recorded under Section 164 Cr.P.C., suggests that at the time of alleged kidnapping of her, bail petitioner was present, but as has been noticed hereinabove, victim/prosecutrix and main accused Rustam alias Kalu were known to each other and they wanted to solemnize marriage.

No doubt, victim/ prosecutrix at the time of alleged commission of offence was minor, but having carefully perused her statement recorded by the Judicial Magistrate under Section 164 Cr.P.C., it can be safely inferred that she of her own volition and without there being any external pressure joined the company of the main accused Rustam alias Kalu, with whom she wanted to solemnize marriage.

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 to be collected on record by the investigating agency, but having noticed aforesaid aspect of the matter, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period during trial.

Apprehension expressed by learned Additional Advocate General with regard to petitioner's fleeing from justice in the .

event of his being enlarged on bail, can be best met by putting him to stringent conditions, as has been fairly admitted by the learned counsel representing the bail petitioner.

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.

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 r to 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;

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character, behaviour, means, position and

(v) 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, present bail petition is allowed. Petitioner is ordered to be enlarged on bail subject to his furnishing personal bond in the sum of Rs. 1,00,000/□(Rs. One lac) with one surety in the like amount, 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.

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 3rd January, 2019 (shankar)