

Jasvinder Singh vs State Of Himachal Pradesh on 24 September, 2020

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr. MP (M) No. 1569 of 2020
Decided on September 24, 2020

Jasvinder Singh		...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. Rajiv Rai, Advocate, through
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	video-conferencing.
For the respondent	Mr. Sudhir Bhatnagar and Mr.
	Arvind Sharma, Additional
	Advocates General with Mr.
r	Kunal Thakur, Deputy Advocate
	General, through video-
	conferencing.

Sandeep Sharma, J. (Oral)

Bail petitioner, Jasvinder Singh, who is behind bars since 5.8.2020, has approached this Court in the instant proceedings filed under S.439 CrPC, for grant of regular bail in FIR No. 165, dated 5.8.2020 under S.20 of the Narcotic Drugs & Psychotropic Substances Act, registered at Police Station Bhoranj, District Hamirpur, Himachal Pradesh.

2. Status report filed in terms of order dated 8.9.2020, reveals that on 5.8.2020, police party at 3.55 pm, stopped one Mini Truck (Mahindra) bearing registration No. HP-74A-2191, for checking. Since the driver of the vehicle after having seen the police, got perplexed and made an attempt to flee from the spot, Whether reporters of the local papers may be allowed to see the judgment?

police, after apprehending him, carried out his personal search as well as search of the truck and allegedly recovered 102 grams .

of Charas from a carry bag allegedly kept under the seat of the truck, in the presence of independent witness. In the aforesaid background, FIR as detailed herein above, came to be lodged against the bail petitioner on 5.8.2020 and since then, bail petitioner is behind the bars.

3. Mr. Kunal Thakur, learned Deputy Advocate General, while fairly admitting the factum with regard to completion of investigation, contends that though nothing remains to be recovered from the bail petitioner but keeping in view the gravity of offence alleged to have been committed by bail petitioner, he does not deserve any leniency rather the bail petitioner needs to be dealt with severely as such, petition may be rejected outrightly. Mr. Thakur, Learned Deputy Advocate General, further states that as per report, one criminal case has been registered against the bail petitioner, as such, it would not be in the interest of justice to enlarge him on bail at this stage.

4. Having heard learned counsel for the parties and perused the material available on record, this court finds that the police allegedly recovered 102 grams of Charas from the truck being driven by the bail petitioner, in the presence of Ward Member of the area, as such, there is no force in the submission of learned Counsel appearing for the petitioner that his client has been falsely implicated, however, having taken note of the intermediate quantity i.e. 102 gram Charas allegedly recovered .

from the truck being driven by the bail petitioner coupled with the fact that he is a first offender, prayer made on behalf of the bail petitioner for grant of bail deserves to be allowed. Status report reveals that a criminal case under Ss. 306, 498, 304B, 506 and 34 IPC is pending against the bail petitioner. Since, guilt, if any, of the bail petitioner is yet to be established in the aforesaid case coupled with the fact that no other case is pending against the bail petitioner under the Narcotic Drugs & Psychotropic Substances Act, mere pendency of aforesaid case cannot be a ground for this court to reject the prayer made for grant of bail.

No doubt, offence alleged to have been committed by the bail petitioner is serious one, having an adverse impact on the society, but since guilt, if any, of the bail petitioner is yet to be determined in

the totality of the evidence collected on record by the prosecution, it would not be appropriate to let the bail petitioner incarcerated in jail for an indefinite period during trial, especially when there is nothing available on record, suggestive of the fact that in the event of being enlarged on bail, bail petitioner may indulge in such activities again. Apprehension expressed by learned Deputy Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting him to stringent conditions.

5. Hon'ble Apex Court and this Court, in a catena of judgments have held that till the time, guilt, if any, of a person is .

proved, he/she is deemed to be innocent. In the case at hand also, guilt, if any, of the bail petitioner is yet to be determined in the totality of the evidence collected on record by the prosecution. Otherwise also in the wake of Covid-19 pandemic, there is every likelihood of trial being delayed and as such, there is no justification to keep the bail petitioner behind the bars for an indefinite period during trial..

6. 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 held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held 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*."

7. By now it is well settled 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. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation (2012)*¹ Supreme Court Cases 49; has been 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 r, 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."

8. 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 also, normal rule is of bail .

and not jail. Apart from above, 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.

9. In Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218, Hon'ble Apex Court has held as under:

r" This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat 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 a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.

It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

10. r 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.

11. In view of above, bail petitioner has carved out a case for himself. Consequently, present petition is allowed. Bail petitioner is ordered to be enlarged subject to furnishing bail bonds in the sum of Rs.50,000/- with one local surety in the like amount, to the satisfaction of the Investigating Officer/learned .

Magistrate available at the station, besides the 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 r 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.

12. It is clarified that if the petitioner misuses the 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.

13. 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 petition alone.

The petition stands accordingly disposed of.

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(Sandeep Sharma) Judge September 24, 2020 (vikrant)