

Darshan Singh vs State Of Himachal Pradesh on 8 May, 2018

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No.487 of 2018 a/w
Cr.MP(M) Nos. 488,489,490,521 and 550 of 2018.

Date of Decision No.8.5.2018

1. Cr.MP(M) No.487 of 2018

Darshan Singh Petitioner.

Versus

State of Himachal PradeshRespondent.

2. Cr.MP(M) No.488 of 2018

Prem Verma Petitioner.

Versus

State of Himachal PradeshRespondent.

3. Cr.MP(M) No.489 of 2018

Deepak Dubey Petitioner.

Versus

State of Himachal Pradesh
4. Cr.MP(M) No.490 of 2018

.....Respondent.

Sunil Pundir

.... Petitioner.

Versus

State of Himachal Pradesh

.....Respondent.

5. Cr.MP(M) No.521 of 2018

Inderjeet Singh

.... Petitioner.

Versus

State of Himachal Pradesh
6. Cr.MP(M) No.550 of 2018

.....Respondent.

Mansi Tiwari

.... Petitioner.

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Versus

State of Himachal Pradesh

.....Res

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1 Yes.

For the Petitioner(s): Mr. Anup Rattan, Advocate.

For the Respondent(s): Mr. Dinesh Thakur, Additional Advocate General, and Mr. Vikrant Chandel, Deputy Advocate General, for the respondent-State.

Sandeep Sharma, Judge (oral):

Since all the above captioned bail petitions arise out of same FIR, same are being taken up together, for disposal by way of this common judgment.

2. Bail petitioners, named hereinabove, apprehending their arrest, have approached this Court for grant of anticipatory bail in case FIR No.59 of 2018, dated 15.3.2018 under Sections 377, 342, 323, 367, 147, 148, 149 of IPC and Section 25 of the Arms Act, registered at police Station, Paonta Sahib, District Sirmaur, Himachal Pradesh.

3. Sequel to order dated 23.4.2018, whereby this Court ordered for the enlargement of the bail petitioners on interim bail in the event of their arrest in connection with aforesaid FIR, SI Harmesh Kumar, has come present in Court with record. Mr. Dinesh Thakur, learned Additional Advocate General has also placed on record status report, prepared on the basis of Whether the reporters of the local papers may be allowed to see the judgment?

investigation carried out by the Investigating Agency. Record perused and returned.

4. Close scrutiny of the record/ status report suggest .

that complainant, Sh. Nagender Tarun and his wife Smt. Upasana vide complaint dated 22.6.2017, addressed to the Sub Divisional Magistrate, Paonta Sahib, apprehended threats to their lives from the present bail petitioners. Aforesaid communication sent to SDM was later on forwarded to police Station, Paonta Sahib for necessary action. On 20.7.2017, police entered the report in Rojnamcha, whereafter complainant was called upon to render assistance in the investigation and to produce evidence, if any, in support of the allegations contained in the complaint lodged before the SDM, Paonta Sahib, however fact remains that on 24.7.2017, complainant made a statement to

Investigating Officer, Sewa Singh that he does not want to pursue his complaint.

5. Record further reveals that apart from aforesaid complaint dated 22.6.2017, complainant also submitted two complaints dated 24.11.2017 and 4.1.2018 to the Superintendent of Police, Sirmaur, who directed Dy. Superintendent of Police, Paonta Sahib to conduct the investigation. Complainant in his complaint disclosed to the police that persons namely Rahul Sareen and Sanehi Chawala are/were the eye witnesses to the alleged incident, but record suggest that persons named hereinabove, in their statements given to the police categorically denied the factum with regard to alleged incident allegedly occurred on 26th June, 2017. Complainant in his complaint had alleged that bail petitioners Deepak Dubey and Sunil Pundir after .

having hit his vehicle pulled him out of the vehicle and kidnapped him. In support of aforesaid allegations of his, he stated in the complaint that he was kidnapped in the presence of local residents namely Sanjay Verma, Kuldeep Singh Rawat, Smt.Manpreet Kaur and Kiran Aggarwal, but all the above named persons in their statements recorded by the police feigned ignorance with regard to alleged incident. Investigating Officer after having conducted investigation has come to the conclusion that allegations contained in different complaints made by the complainant are contradictory and they have been not found to be correct. Police after recording the statement of witnesses submitted its report to Superintendent of Police, Sirmaur.

6. Mr. Anup Rattan, learned counsel representing the bail petitioners, while referring to the status report, vehemently argued that no case is made out against the bail petitioners and as such, they deserve to be enlarged on bail. He further stated that as per investigation carried out by the Investigating Agency, nothing concrete has emerged against the bail petitioners, rather complaints having been filed by the complainant have been found to be false and as such, no fruitful purpose would be served in case the police is allowed custodial interrogation of the bail petitioners, who otherwise have made themselves available for investigation in terms of order dated 23.4.2018, passed by this Court. Mr. Rattan, further contended that though reports .

submitted by the police suggest that some cases were registered against the bail petitioners namely Inderjeet Singh and Darshan Singh, but perusal of the record/report itself suggest that in majority of cases persons named hereinabove, have been either acquitted or parties have compromised the matter inter se them.

Lastly, Mr. Rattan, contended that alleged incident pertains to the year, 2017 and at present there is nothing on record suggestive of the fact that during this period bail petitioners threatened the complainant and as such, all the bail petitioners being local resident of the area deserve to be enlarged on bail.

7. Mr. Dinesh Thakur, learned Additional Advocate General, fairly admitted that all the bail petitioners have joined the investigation in terms of order dated 23.4.2018, passed by this Court and they are fully co-operating with the investigating agency. Mr. Thakur, further contended that though perusal of the status report filed by the investigating agency, suggest that despite there being detailed investigating carried out by the Investigating Agency, nothing concrete has emerged against

the bail petitioners, but taking note of past record of the bail petitioners, they do not deserve to be enlarged on bail. Mr. Thakur, while referring to the status report, contended that as many as 10 cases have been registered against the bail petitioners Inderjeet Singh and Darshan Singh and as such, it cannot be said that they are not involved in criminal cases. Mr. Thakur, further contended that investigation .

in the case is yet to be completed and enlargement of the bail petitioners at this stage, would hamper the investigation. Mr. Thakur, further contended that mobile phone allegedly used for making video of complainant is yet to be recovered and co-accused namely Mansi Tiwari i.e. one of the bail petitioner, who had allegedly made video of complainant has not joined the investigation till date and as such, prayer having been made by the bail petitioners by way of instant petitions, deserve to be rejected.

8. Having heard learned counsel for the parties and perused the record, this Court finds that initial complaint was lodged on 22nd June, 2017, on the basis of which, formal FIR came to be registered against the bail petitioners. Though, complainant in his complaints dated 22nd June, 2017, 24th July, 2017 and 4th January, 2018, alleged that bail petitioners after having kidnapped him from his scooty gave him beatings and thereafter illegally made his video, however, record made available to this Court suggest that Investigating Agency after having received aforesaid report investigated the matter, but allegations contained in the complaints have been not found to be correct. Though, allegations contained in the FIR, shall be considered and decided by the court below on the basis of evidence, if any, collected on record by the prosecution/investigating agency, but at this stage, this court having perused the material available on record is .

inclined to agree with Mr. Anup Rattan, learned counsel for the petitioners that since all the bail petitioners have joined the investigation, no fruitful purpose would be served in case police is allowed custodial interrogation of the bail petitioners, who have otherwise joined the investigation, as has been fairly admitted by the learned Additional Advocate General.

9. No doubt, perusal of the status report suggest that many cases are/were registered against the bail petitioner namely Inderjeet Singh and Dharshan Singh, but that cannot be a ground to deny the bail because report itself suggest that in majority of cases either persons named hereinabove have been acquitted or parties have settled the matter amicably inter se them.

10. Apart from above, guilt, if any of bail petitioners is yet to be proved, in accordance with law, by the prosecution by leading cogent and convincing evidence and as such, this Court sees no reasons to curtail the freedom of the bail petitioners for indefinite period. Investigating agency has not made available on record, material, if any, from where it can be inferred that in the event of petitioner's being enlarged on bail, they would flee from justice, rather they all being local residents of the area shall remain available for investigation and trial as and when called by the investigating agency.

11. Needless to say, guilt, if any, of the bail petitioners is .

yet to be proved in accordance with law by the prosecution by leading cogent and convincing evidence. It is well settled that till the time a person is not found guilty, one is deemed to be innocent. 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 has 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*.

12. 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.

13. 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."

14. Law with regard to grant of bail is now well settled.

The Apex Court in *Siddharam Satlingappa Mhetre versus State of Maharashtra and others*, (2011) 1 SCC 694, while relying upon its decision rendered by its Constitution Bench in *Gurbaksh Singh Sibbia vs. State of Punjab*, (1980) 2 SCC 565, laid down the following parameters for grant of bail:-

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia's case* (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience .

they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

r (iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

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(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail." (Emphasis supplied)

15. 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.

16. Consequently, in view of the above, order dated 23.4.2018, passed by this Court, is made absolute, subject to their furnishing personal bond in the sum of Rs. 1,00,000/- with two local sureties each in the like amount to the satisfaction of the Investigating Officer, with following conditions:

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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 them from disclosing such facts to the Court or the Police Officer; and d. They shall not leave the territory of India without the prior permission of the Court.

17. It is clarified that if the petitioners misuses their liberty or violates any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

18. 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(s) alone.

The bail petition(s) stands disposed of accordingly.

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(Sandeep Sharma), Judge 8th May, 2018 (shankar)