

Savitri vs State Of Himachal Pradesh on 6 March, 2024

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MP (M) No. 202 of 2024 .

Reserved on: 01.03.2024 Date of Decision: 06.3.2024.

Savitri

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Versus

State of Himachal Pradesh

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Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1. No. For the petitioner : Mr. Arvind Sharma, Advocate.

For the Respondent : Mr. Prashant Sen, Deputy Advocate General.

Rakesh Kainthla, Judge The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested for the commission of offences punishable under Sections 307, 120-B and 201 of the Indian Penal Code (IPC) and Section 25 of the Indian Arms Act. The petitioner is innocent and she was falsely implicated. The petitioner was not named in the Whether reporters of Local Papers may be allowed to see the judgment? Yes.

FIR and she was arrayed as an accused based on suspicion. The investigation is complete and the petitioner is not required by .

the police. She does not have any criminal history. She is working as a labourer. Three minor daughters are dependent upon her. The petitioner would abide by all the terms and conditions that may be imposed by the Court. Therefore, it was prayed that the petition be allowed and the petitioner be released on bail.r

2. The petition is opposed by filing a status report asserting that the informant Tahir made a complaint to the police stating that he was employed as a driver at Sanjay Farm, Latwala with Pradeep Kumar. He received a call on 29.11.2023 at 9.00 PM from Amit, who told him that a party was organised to celebrate the birthday of Amit's daughter. The informant and Gopal Pandey went to the room of Amit. Amit advised them to have a party at some other place. Informant Tahir, Gopal Pandey, Amit and his wife went to Saurabh Van Vihar where they had a party. The informant dropped Amit and his wife at their room at 11.00 PM. They were returning to their farmhouse, Latwala. A white-coloured vehicle was parked on the road. One person came out of the vehicle armed with a gun and fired at the informant. The informant and Gopal Pandey sustained injuries.

Amit had called someone and the informant suspected that the .

incident had resulted due to the phone call made by Amit. The police conducted the investigation and interrogated Amit. He revealed on inquiry that Farm House might have a lot of money and Tahir was to be kidnapped. Amit, Savitri and Vicky had revealed the location of the informant. The police arrested the accused Amit and the petitioner Savitri. Vicky was interrogated and revealed that he and his friend Kala had shot at Tahir and Gopal Pandey. The police seized a rifle, pistol and the vehicle.

The police arrested Virender Kumar, who confirmed the version of the other accused. Accused Shivam alias Giani was also arrested and he got a pistol recovered by making a disclosure statement. Test Identification Parade of the accused Shivam, Pankaj and Vikram was conducted. Amit Kumar and Virender were found talking to each other. They had even talked on the date of the incident. Savitri, Pankaj and Virender had talked to each other. The result of the analysis shows that the gunshot injury could have been caused by firing the cartridge from the firearm recovered by the police. The accused had planned to extort money after kidnapping the informant. Hence, it was prayed that the present petition be dismissed.

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3. I have heard Mr. Arvind Sharma, learned counsel for the petitioner and Mr. Prashant Sen, learned Deputy Advocate General for the respondent/State.

4. Mr. Arvind Sharma, learned counsel for the petitioner submitted that the petitioner is innocent and she was falsely implicated. There is no legally admissible evidence against the petitioner. The police relied upon the statement made by the co-accused which is inadmissible. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Prashant Sen, learned Deputy Advocate General for the respondent-State submitted that the petitioner had entered into a conspiracy with the co-accused to kidnap the informant. The offence is heinous and releasing the petitioner on bail would adversely affect the investigation. Therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

7. The Hon'ble Supreme Court had discussed the parameters for granting the bail in Bhagwan Singh v. Dilip .

Kumar, 2023 SCC OnLine SC 1059 as under: -

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt

with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

- (a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;
- (b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.
- (c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.
- (d) Frivility of 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 have an order of bail.

13. We may also profitably refer to a decision of this Court in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528 where the parameters to be taken into consideration for the grant of bail by the Courts have been explained in the following words:

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"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and Puran v.

Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)"

8. A similar view was taken in State of Haryana vs Dharamraj 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598 and Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528. In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the .

relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(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.'

9. The status report shows that the police are relying upon the statements made by the co-accused to implicate the petitioner. There is a force in the submission of learned counsel for the petitioner that the statement made by the co-accused is not admissible in evidence. It was laid down by the Hon'ble .

Supreme Court in Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361: 2019 SCC OnLine SC 588 that a statement made by co-accused during the investigation is hit by Section 162 of Cr.P.C. and cannot be used as a piece of evidence. Further, the

confession made by the co-

accused will be inadmissible because of Section 25 of the Indian Evidence Act. It was observed at page 568:-

44. Such a person viz. person who is named in the FIR, and therefore, the accused in the eye of the law, can indeed be questioned and the statement is taken by the police officer. A confession, which is made to a police officer, would be inadmissible having regard to Section 25 of the Evidence Act. A confession, which is vitiated under Section 24 of the Evidence Act would also be inadmissible.

A confession unless it fulfils the test laid down in Pakala Narayana Swami [Pakala Narayana Swami v. King Emperor, 1939 SCC OnLine PC 1 : (1938-39) 66 IA 66: AIR 1939 PC 47] and as accepted by this Court, may still be used as an admission under Section 21 of the Evidence Act. This, however, is subject to the bar of admissibility of a statement under Section 161 CrPC. Therefore, even if a statement contains admission, the statement being one under Section 161, it would immediately attract the bar under Section 162 CrPC."

10. Therefore, no advantage can be derived by the prosecution from the statement made by the co-accused.

11. There is no independent evidence against the present petitioner. The police effected the recovery based upon the .

disclosure statement made by the co-accused; however, no such recovery was effected at the instance of the petitioner. The police are relying upon the call details between the present petitioner but that is not sufficient.

12. It was laid down by this Court in Dinesh Kumar @ Billa Versus State of H.P. 2020 Cri.L.J.4564 that a confession of the co-accused and the phone calls are not sufficient to deny bail to a person.

13. This position was reiterated in Saina Devi vs. State of Himachal Pradesh 2022 LawSuit(HP) 211, wherein it was observed:-

"[16] In the facts of the instant case also the prosecution, for implicating the petitioner, relies upon firstly the confessional statement made by accused Dabe Ram and secondly the CDR details of calls exchanged between the petitioner and the wife of co-accused Dabe Ram. Taking into consideration, the evidence with respect to the availability of CDR details involving the phone number of the petitioner and the mobile phone number of the wife of coaccused Dabe Ram, this Court had considered the existence of a prime facie case against the petitioner and had rejected the bail application as not satisfying the conditions of Section 37 of NDPS Act.

[17] Since, the existence of CDR details of accused person(s) has not been considered as a circumstance sufficient to hold a prima facie case against the accused .

person(s), in Pallulabid Ahmad's case (supra), this Court is of the view that petitioner has made out a case for maintainability of his successive bail application as also for grant of bail in his favour.

[18] Except for the existence of CDRs and the disclosure statement of the co-accused, no other material appears to have been collected against the petitioner. The disclosure made by the co-accused cannot be read against the petitioner as per the mandate of the Hon'ble Supreme Court in Tofan Singh Vs State of Tamil Nadu, 2021 4 SCC 1. Further, on the basis of aforesaid elucidation, the petitioner is also entitled to the benefit of bail.

14. A similar view was taken by this Court in Dabe Ram vs. State of H.P., Cr.MP(M) No. 1894 of 2023, decided on 01.09.2023, Parvesh Saini vs State of H.P., Cr.MP(M) No. 2355 of 2023, decided on 06.10.2023 and Relu Ram vs. State of H.P. Cr.MP(M) No. 1061 of 2023, decided on 15.05.2023,

15. Thus, there is insufficient material at this stage to connect the petitioner with the commission of offences punishable under Sections 307, 120-B, and 201 of the IPC and Section 25 of the Indian Arms Act. Therefore, the petitioner deserves to be released on bail.

16. In view of the above, the petitioner is ordered to be released on bail in the sum of 50,000/- with two sureties of the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioner will abide by the following terms and .

conditions: -

(i) The petitioner will join the investigation as and when directed to do so by means of a written hukamnama.

(ii) The petitioner will not intimidate the witnesses nor will she influence any evidence in any manner whatsoever.

(iii) The petitioner shall attend the trial in case a charge sheet is presented against her and will not seek unnecessary adjournments.

(iv) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of intending visit to the SHO, the Police Station concerned and the Trial Court.

(v) The petitioner will furnish her mobile number, and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change

in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

17. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

18. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, .

whatsoever, on the merits of the case.

(Rakesh Kainthla)

Judge

6th March, 2024
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