

## Nonender Singh vs State Of Himachal Pradesh on 3 May, 2024

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA Cr.MP(M) No. 242 of 2024 a/w Cr.MP(M) No. 229 of 2024 Reserved on: 30th April, 2024 Announced on: 3rd May, 2024 .

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Cr.MP(M)  
No. 242 of 2024 Nonender Singh .....Petitioner Versus State of Himachal Pradesh .....Respondent

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Cr.MP(M)  
No. 229 of 2024 Inderpal Singh State of Himachal Pradesh to Versus .....Petitioner .....Respondent  
Coram Hon'ble Mr. Justice Ranjan Sharma, Judge 1 Whether approved for reporting? No For the petitioner(s) : Mr. Vinod Chauhan, Advocate.

For the respondent(s) : Mr. Prashant Sen, Deputy Advocate General.

Ranjan Sharma, Judge Bail petitioner [Nonender Singh] and his son [Inder Pal Singh] being the bail petitioners in connected bail application have come up before this Court, seeking pre-

arrest bail, under Section 438 of the Code of Criminal Whether reporters of Local Papers may be allowed to see the judgment?

Procedure [hereinafter referred to as Cr.P.C] originating from the FIR No. 18 of 2024 dated 03.02.2024, registered at Police Station Sadar Nahan, District Sirmaur [H.P.], .

under Section 379 of the Indian Penal Code.

### FACTUAL MATRIX

2. Precisely, the case of the bail-petitioners, as set by Mr. Vinod Chauhan, Advocate, is that the bail-petitioners have been falsely implicated and they are innocent persons.

It is further averred that the bail petitioners have not committed any offence. A specific case has been put up that on the date of occurrence of offence, the bail-petitioners were not present at the spot and they have no role in the matter whereas it is the main accused, namely Bobby, Deepak and Karan have indulged themselves in the aforesaid theft of Iron Grills and even the CCTV Footage and the Tower location reveals that the bail petitioners were not on the spot of occurrence i.e. Chamba ground and Indoor Stadium at Nahan.

In this background, it is further stated that the bail petitioners have been falsely implicated and they belonged to respectable family and there are no chances of the bail petitioners fleeing away either from investigation or from the trial in any manner. It is further submitted that bail-

petitioners do not have any past criminal history and since .

they have joined the investigation, therefore, no useful purpose would be achieved by denying the concession of bail to the bail petitioners.

2(i) Notably the bail-petitioners have approached the Learned Trial Court on 08.02.2024 vide Bail Application No.24-N/22 of 2024 and Bail Application 23-N/22 of 2024 and the same were decided on 14.02.2024 whereby, the Learned Trial Court rejected the pre-arrest bail of the petitioners, on the ground that the bail petitioner Nonender Singh has blemished past conduct as nine cases are registered against him and the CCTV Footage reveals that though the Iron Grills were stolen by Bobby and Deepak, but these grills were loaded/transported in the vehicle of the bail petitioners; and the ground that the bail petitioners are not cooperating in investigations and recovery of stolen Grills is yet to be affected, at the relevant time.

STAND OF STATE AUTHORITIES 3 Upon issuance of notice by this Court on 15.02.2024, this Court had directed the State Authorities to file the Status Report within two weeks. However, in view of the averments made in the bail petition, this Court .

granted interim bail on 15.02.2024.

The matter was then listed before this Court on 21.03.2024 and then on 09.04.2024, when, the State Authorities have filed the Status Report dated 21.03.2024 [Taken on record], on the Instructions of Incharge Police Station Sadar, District Sirmaur (HP). The copy of the Status Report was supplied to the learned counsel for the petitioner and therefore, the matter was adjourned for consideration on 09.04.2024.

3(i) As per the Status Report, the prosecution story is that on 02.02.2024, at about 9:40 PM, an incident of theft of about 30 Iron Grills, amounting to Rs 60,000/- was reported to have taken place at the instance of main accused-

Bobby as per the CCTV Footage, from Chamba Ground and Indoor Stadium at Nahan. On 03.02.2024, the District Youth Services & Sports Officer, Nahan [H.P.] submitted a written complaint. The Status Report further reveals that these Iron Grills were loaded by the main accused-Bobby in the Van, bearing Registration No.HP-71-3399, was owned by the bail petitioners for which the main accused was given an amount of Rs 1800/- also.

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During investigation, the statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure. The Status Report further reveals that during investigation on 03.02.2024, the main accused-Bobby has stated that he had taken the Iron Grills in vehicle bearing Registration No.HP-71-3399 and these Grills were kept underneath the stairs of the house of the bail petitioner-

Nonender Singh his father.

3(ii) The Status Report reveals that during investigation, the aforesaid Iron Grills which were brought to his shop by the main accused Bobby, Deepak and Karan, were destroyed by them and then sold to one Ashok Kumar, a scrap owner at Kala Amb and therefore, the aforesaid Grills could not be recovered at that stage. The Status Report further indicates that on 28.02.2024, the Investigating Agencies, have recorded the statement of the aforesaid scrap dealer, namely Ashok Kumar, resident of Kala Amb, who has stated that the Iron Grills have been totally destroyed, cut into pieces and have been sold further to some other person as per practice.

During investigation on 14.03.2024, the bail .

petitioner [Nonender Singh] has deposited an amount of Rs 40,000/-, with the Malkhana, towards the costs of recovery of Grills. The Status Report further reveals that the bail petitioners are not required for further investigation However, it is stated that the third main accused Karan, is required for investigation, in addition to accused namely, Bobby and Deepak who are in custody.

4. Heard Mr. Vinod Chauhan, Learned Counsel for the bail petitioners and Mr. Prashant Sen, Learned Deputy Advocate General for the Respondent-State.

5. Before dealing with the present application, it is necessary to take note of the provisions of Section 438 of the Cr.P.C. and Section 379 of the Indian Penal Code, as under:-

Section 438 Cr.P.C:

Direction for grant of bail to person apprehending arrest:

(1). Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter-alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

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

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

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail;

r Provided that, where the High Court or as the case may be, the Court of Session, has not passed any interim order under this Sub-Section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under Sub-Section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice. (2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-

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(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under Sub-Section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under Sub-Section (1).

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376 AB or section 376DA or section 376DB of the Indian Penal Code.

## Section 379 of Indian Penal Code

### 379. Punishment for theft.--

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or .

with both.

6. Notably, the claim of the suspect-accused for pre-

arrest or post arrest bail is to be examined/tested within the parameters prescribed of the Code of Criminal Procedure and also the broad para-meters mandated by the Hon'ble Supreme Court regulating grant of bail in Gurbaksh Singh Sibbia versus State of Punjab (1980) 2 SCC 565, Ram Govind Upadhyay versus Sudarshan Singh (2002) 3 SCC 598 ;

Kalyan Chandra Sarkar versus Rajesh Ranjan, (2004) 7 SCC 528; Prasanta Kumar Sarkar versus Ashish Chatterjee, (2010) 14 SCC 496 ; reiterated in the case of P. Chidambaram versus Directorate of Enforcement, (2019) 9 SCC 24, mandating that the bail {anticipatory or regular} is to be granted where the case is frivolous or groundless and no prima facie or reasonable grounds exists which lead to believe or point out towards accusation; and these parameters have been reiterated in Sushila Aggarwal versus State-NCT Delhi, (2020) 5 SCC 01.

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6(i). While dealing with the case for grant of bail, the three judges bench of Hon'ble Supreme Court, after reiterating the broad parameters, has held .

in Deepak Yadav versus State of Uttar Pradesh, (2022) 8 SCC 559, in Para-25 that the nature of the crime has a huge relevancy, while considering claim for bail.

6(ii). In the case of Ansar Ahmad versus State of Uttar Pradesh, 2023 SCC Online SC 974, the Hon'ble Supreme Court had expanded the the broad parameters, which are to be primarily taken r horizon of into account after reflecting judicial application of mind while considering the claim for bail as under:

11. Mr. R. Basant, the learned Senior Counsel appearing for one of the private respondents that the Court while granting bail is not required to give detailed reasons touching the merits or de-merits of the prosecution case as any such observation made by the Court in a bail matter can unwittingly cause prejudice to the prosecution or the accused at a later stage. The settled proposition of law, in our considered opinion, is that the order granting bail should reflect the judicial application of mind taking into consideration the well-known parameters including:

(i) The nature of the accusation weighing in the gravity and severity of the offence;

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(ii) The severity of punishment;

(iii) The position or status of the accused,

i.e. whether the accused can exercise influence on the victim and the witnesses or not;

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(iv) Likelihood of accused to approach or try to approach the victims/witnesses;

(v) Likelihood of accused absconding from proceedings;

(vi) Possibility of accused tampering with evidence;

(vii) Obstructing or attempting to obstruct the due course of justice;

(viii) Possibility of repetition of offence if left out on bail;

(ix) The prima facie satisfaction of the court in support of the charge r including frivolity of the charge;

(x) The different and distinct facts of each case and nature of substantive and corroborative evidence.

12. We hasten to add that there can be several other relevant factors which, depending upon the peculiar facts and circumstances of a case, would be required to be kept in mind while granting or refusing bail to an accused. It may be difficult to illustrate all such circumstances, for there cannot be any straight jacket formula for exercising the discretionary jurisdiction vested in a Court under Sections 438 and 439 respectively of the CrPC, as the case may be.

7. Based on the above mandate of law, the general principle of law, is that bail is a rule and jail is an exception. However, this Court is conscious of the fact that

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the power under Section 438 is an extraordinary power and the same has to be exercised sparingly. It is trite law that while considering the prayer for bail {pre-arrest bail or .

regular bail], the formation of prima facie opinion is to gathered as to whether reasonable grounds exist pointing towards accusation or whether the accusation is frivolous and groundless with the object of either injuring or humiliating or where a person has falsely been roped in the crime needs to be background of the self-imposed restrains or the broad r tested in the parameters mandated by law, as referred to herein above.

8. This Court is also conscious of the fact that as per the mandate of law, in Criminal Appeal No 3840 of 2023, titled as Saumya Churasia versus Directorate of Enforcement, decided on 14.12.2023,

while considering the prayer for bail, though a Court is not required to weigh the evidence collected by the Investigating Agency meticulously, nonetheless, the Court should keep in mind the nature of accusation, the nature of evidence collected in support thereof, the severity of punishment prescribed

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for alleged offences, the character of the accused, the circumstances which are peculiar to the accused, the reasonable possibility of securing the presence of the .

accused during trial, reasonable apprehension of the witnesses being tampered with, the large interests of the public/state.

In this background, while testing the claim for bail, the Court is required to form a prima-facie opinion in the context of the broad-parameters referred to above, without delving into the evidence on merits, as it may tend to prejudice the rights of the accused as well as the prosecution.

#### ANALYSIS OF CLAIM IN INSTANT CASE

9. After taking into account the entirety of the facts and circumstances, the statutory provisions and the mandate of law, as referred to above, and the material on record, which is borne out from the Status Report, this Court is of the considered view that the interim bail, granted by this Court on 15.02.2024, to the both bail-petitioners needs to be made absolute, for the following reasons:-

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9(i) Perusal of the Status Report points out that no prima facie case or reasonable grounds exist pointing out towards the accusation against the bail-petitioners.

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9(ii) The Status Report dated 21.03.2024 and the investigation conducted by the State Authorities-Police including the statements of the witnesses recorded under Section 161 of Code of Criminal Procedure, reveal that though the case of the prosecution is that the main accused-

Bobby had resorted to the aforesaid theft of Iron Grills from the Chamba Ground and Stadium at Nahan in terms of the CCTV Footage but there is no material on record, in the Status Report, to suggest that the theft of Iron Grills or theft was actually done by the bail-petitioners herein.

Even the CCTV Footage, which is borne out in the Status Report, only points out towards the accusation against the main accused-Bobby, who was seen in the CCTV Footage installed near the HRTC Work Shop and in the second CCTV Footage which

was installed near the Shanti Niwas on the main road which only pointed towards the accusation against the main accused namely Booby Singh, as referred to above. Once the CCTV Footage, nowhere points

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out that the theft of grills was made by the bail petitioners, then, in absence of any material/evidence on record, the accusation against the bail petitioners is prima facie is not .

borne out.

It is further reveals that even during investigation, once the bail petitioners, have associated with the police and have stated that the Iron Grills, which were stolen by the main accused-Bobby Singh in coordinated efforts with other accused namely Deepak and Karan, were destroyed and sold by them to a scrap dealer, Ashok Kumar, Resident of Kala Amb, then, the accusation against the bail petitioners is prima facie not made out.

9(iii) Notably, merely because the vehicle of the bail petitioners bearing Registration No. HP-71-3399 was used by the main accused-Bobby Singh, Deepak and Karan, for transporting the Iron Grills, cannot be made the basis for drawing an inference alleging theft, against the bail petitioners, when, for the illegal acts of main accused-Bobby Singh, Deepak and Karan, the bail petitioners cannot be implicated falsely therefore, the prima facie accusation is not borne out, at this stage, against the bail-petitioners.

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In view of the above background, coupled with the fact, that the accusation against the bail petitioners is not of a grave nature which requires the arrest of the bail .

petitioners, when, the Status Report also does not prima facie reveals anything against the bail petitioners are required to be arrested, therefore, in this backdrop, this Court is inclined to accede to the prayer for enlargement on bail in favour of the bail petitioners.

9(iv).

Further, the Status Report does not indicate that on release on bail, there is any danger of the justice being thwarted/obstructed or any possibility of the offence being repeated by the bail-petitioner.



9(v). The Status Report does not indicate anything showing that there is no likelihood of the bail petitioners fleeing from the investigation or trial then, the benefit of anticipatory bail needs to be accorded.

9(vi). The Status Report does not spell out any other adversarial circumstances against the bail petitioners, except the accusations in the present FIR [even not made out prima facie, at this stage].

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9(vii). The Status Report also does not spell out any eventuality that in case of grant of bail, the justice would be thwarted by the bail petitioners in any manner.

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9(viii). Moreover, the pre-trial punishment is prohibited under the law. The trial of the accused will take sufficient long time and no useful purpose would be served by keeping them in judicial custody, when, in prima facie opinion of this Court, no prima facie case or reasonable grounds 9(ix). Even if they exist against the bail petitioners.

past criminal antecedents/criminal history, if any, cannot be the basis for curtailing the liberty of petitioner(s).

9(x). Status report filed by the State Authorities/police does not spell out any need for the custodial interrogation of the bail petitioner.

9(xi). The mere non-disclosure of self-incriminating material [about alleged recovery of grills] cannot be the basis for curtailing the liberty of the bail petitioners.

9(xii). The Status Report reveals that in compliance to the orders dated 15.02.2024 passed by this Court, granting interim bail, the bail petitioners [Nonender Singh and

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Inder Pal Singh] have joined the investigation on 16.02.2024 and they have participated/cooperated in the investigation with the Police Authorities.

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9(xiii). Besides the above, once the bail petitioners have furnished the requisite undertaking(s) before this Court, that they shall join the investigation; and shall not tamper with the evidence-witnesses in any manner; and shall not cause any inducement, threat or promise to any person or persons, acquainted with the facts of

the case, and once the State has not expressed any apprehension concern;

in these circumstances, therefore, this Court is inclined to extend the concession of bail to the bail petitioners.

10. In view of the above discussion, the instant bail petition is allowed and the orders dated 15.02.2024, passed by this Court, granting interim bail are made absolute, subject to adherence of the terms and conditions contained in the order dated 15.02.2024, coupled with the fact that the bail petitioners shall continue to join/ participate in the investigation and the trial, thereafter.

11. Any observations made herein-above, shall not be construed in any manner as an expression of opinion

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on the merits of the case, [for or against either of the parties herein] and these observations are made only, for the disposal of the instant bail application.

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In aforesaid terms, the instant petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(Ranjan Sharma) Judge May 03, 2024 (himani)