

Hakim vs Of on 8 September, 2023

Author: Sushil Kukreja

Bench: Sushil Kukreja

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA .

Cr. MP(M) No. 1584 of 2023 Reserved on : 01.08.2023 Decided on : 08.09.2023

HakimPetitioner Versus
of State of Himachal Pradesh Respondent
Coram rt Hon'ble Mr. Justice
Sushil Kukreja, Judge Whether approved for reporting? 1
For the

Petitioner : Mr. Pranshul Sharma and Ms. Kanta Thakur, Advocates.

For the Respondent : Mr. Raj Kumar Negi, Additional Advocate General.

Sushil Kukreja, Judge The
instant bail application has been filed by the petitioner under Section 439 of the Code of Criminal Procedure (Cr.P.C.) for grant of bail in case FIR No.38/2022, dated 26.04.2022, under Sections 379 & 34 of the Indian Penal Code (for short, 'IPC'), registered at Police Station Parwanoo, District Solan, H.P. 1Whether reporters of Local Papers may be allowed to see the judgment?

2. Brief facts of the case, as per the status report .

filed by the respondent/State are that on 26.04.2022, the complainant Prithvi Singh filed a complaint before the Police Station Dharampur, District Solan, H.P., stating therein that on 25.04.2022, he could not find his vehicle, bearing of registration No. HR70A-5649, which was parked on the road side near his house on previous day. On 19.07.2022, an rt information was received from Police Station, Dhalli that they caught two persons namely Hakim and Farmaan Walia, who are involved in car theft cases. During the course of interrogation, the accused persons disclosed that on 24/25- 04-2022, they had stolen one Scorpio car, bearing registration No. HR70A-5649 from Parwanoo. On 04.08.2022, petitioner-Hakim gave identification of the spot at Bulandshehar, Uttar Pradesh, where he sold the Scorpio car to Sultan in scrap for a sum of Rs. 35,000/-. The petitioner also disclosed that he and co-accused Farman Walia have stolen two cars from Dhalli, one car from Solan and one car from Dharampur. Consequently, FIR as detailed hereinabove came to be registered against the petitioner and he was arrested.

3. Learned counsel for the petitioner contended that .

the petitioner is innocent and has been falsely implicated in this case. He has further contended that investigation in this case is complete and nothing remains to be recovered at the instance of the

petitioner and, as such, the petitioner, who is of in custody since his arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate rt General opposed the bail application on the ground that keeping in view the gravity of the offence alleged to have been committed by the petitioner, he is not entitled to be enlarged on bail, as he is a habitual offender and many cases of theft have been registered against him at different police stations.

5. I have heard the learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the record of the case. From the perusal of the record, I am of the firm opinion that the petitioner has not made out a case for grant of bail, as prima facie there appears to be an active involvement of the petitioner in the alleged incident of theft and there is also sufficient material against him collected by the investigating .

agency.

6. The law with respect to the grant or refusal of bail is well settled. It has been held by the Hon'ble Supreme Court in a catena of judgments that the grant of bail involves of the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima rt facie view of the involvement of the accused are important. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system. In Chaman Lal Vs. State of U.P. and Another, (2004) 7 SCC 525, the Apex Court has laid down requisite factors for consideration of bail i.e., (i) nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension .

of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge.

7. In Kalyan Chandra Sarkar Vs Rajesh Ranjan of alias Pappu Yadav and Another, (2004) 7 SCC 528, the Hon'ble Apex Court has held that the Court granting bail rt should exercise its discretion in a judicious manner and not as a matter of course. The relevant portion of the aforesaid judgment reads as under:-

"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 or 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.

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8. The Hon'ble Apex Court referred to the factors to be borne in mind while considering an application for bail in *Prasanta Kumar Sarkar vs Ashis Chatterjee and another*, of (2010) 14 SCC 496 and the said factors are as follows:

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"(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. In *Central Bureau of Investigation Vs. V. Vijay Sai Reddy*, (2013) 7 SCC 452 the Apex Court has reiterated the principle by observing as follows:

" 34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar

to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, .

the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words reasonable grounds for believing instead of the evidence which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the of accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

rt

10. In Virupakshappa Gouda Vs. The State of Karnataka, AIR 2017 SC 1685 the Apex Court held that an order of bail cannot be granted in an arbitrary or fanciful manner. The relevant portion of the aforesaid judgment reads as under:-

"18. From the aforesaid principles, it is quite clear that an order of bail cannot be granted in an arbitrary or fanciful manner. In this context, we may, with profit, reproduce a passage from Neeru Yadav Vs. State of Uttar Pradesh, wherein the Court setting aside an order granting bail observed:-

"The issue that is presented before us is whether this Court can annul the order passed by the High Court and curtail the liberty of the 2nd respondent. We are not oblivious of the fact that the liberty is a priceless treasure for a human being. It is founded on the bed rock of constitutional right and accentuated further on human rights principle. It is basically a natural right. In fact, some regard it as the grammar of life. No one would like to lose his liberty or barter it for all the wealth of the world. People from centuries have fought for liberty, for absence of liberty causes sense of emptiness. The sanctity of liberty is the fulcrum of any civilized society. It is a cardinal value on which the civilisation rests. It cannot be allowed to be paralysed and immobilized. Deprivation of liberty of a .

person has enormous impact on his mind as well as body. A democratic body polity which is wedded to rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. The society by its collective wisdom through process of law can withdraw the liberty that it has sanctioned to an individual when an individual becomes a danger to the collective and to the societal order. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from the member, and it desires rt that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the stem of social stream. It is impermissible. Therefore, when an individual behaves in a disharmonious manner ushering in

disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the Court has a duty. It cannot abandon its sacrosanct obligation and pass an order at its own whim or caprice. It has to be guided by the established parameters of law."

11. In Anil Kumar Yadav Vs. State (NCT) of Delhi, AIR 2017 SC 5398 the Apex Court by relying upon various judgments held that for ensuring the fair trial, witnesses must be in a position to freely depose without fear. The relevant portion of the aforesaid judgment reads as under:-

"29. In the present case, the trial is at a very crucial stage. The trial court is yet to record the testimony of material witnesses including the complainant as well as all the material witnesses. The trial has commenced and the trial is said to be posted for 04.12.2017. For ensuring the fair trial, witnesses must be in a position to freely depose without fear. In the facts and circumstances of the case, we are .

convinced that a fair trial can be ensured only if the appellants are not enlarged on bail.

30. We are conscious of the fact that the appellants are only under trials and their liberty is also a relevant consideration. But equally important is to consider the impact of their release on bail on the prosecution witnesses and also its impact on society. In order to ensure that during trial the material witnesses depose without fear and justice being done to the society, a balance has to be struck. Referring to Masroor v. State of Uttar Pradesh and another (2009) 14 SCC 286 and other cases, in State of Bihar v. Rajballav Prasad alias Rajballav Prasad Yadav alias Rajballabh Yadav (2017) 2 SCC 178, this Court held as under:-

"26. We are conscious of the fact that the respondent is only an undertrial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of the accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice-delivery system. It is this need for larger public interest to ensure that criminal justice-delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat to fair trial because of intimidation of witnesses, etc., that would happen because of wrongdoing of the accused himself, and the consequences thereof, he has to suffer....."

[underlying added]"

12. In Mahipal vs. Rajesh Kumar @ Polia and another, (2020) 2 SCC 118 the Hon'ble Apex Court held that the power to grant bail under Section 439 of Cr.P.C. is of a wide amplitude.

Though the grant of bail involves the exercise of discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course. In the said case, the guiding factors for exercise of power to grant bail as held in Ram Govind Upadhyay vs. Sudarshan Singh (2002) 3 SCC 598, were referred, which are as follows:

"11.....

3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail - more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails 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 expected to have the entire evidence establishing the guilt of the Accused beyond reasonable doubt but there ought always of to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be (2002) 3 SCC rt 598 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."

13. In view of the above stated authoritative pronouncement of law laid down by the Apex Court, coming to the facts of the case on hand. The petitioner has allegedly committed theft of Scorpio car and sold it in scrap for a sum of Rs. 35,000/-

and he is also involved in theft of Santro car bearing registration No. HP15-7337. The perusal of the record prima facie reveals that the petitioner is a habitual offender and he has no respect for law.

Once he is released on bail, he again gets involved in similar activities of committing theft. Since the petitioner alongwith other accused persons is involved in various theft cases and so many cases of theft have been registered against him, therefore, this Court does not deem it proper to enlarge the petitioner on bail, because if he is enlarged on bail, he may repeat the similar .

offence and may also flee from justice. Thus, keeping in view the nature and gravity of the offence and also in view of the larger public interest, the present is not a fit case to exercise the discretion under Section 439 of Cr. PC in favour of the petitioner.

of

14. Hence, for the reasons mentioned above, the bail application filed by the petitioner is dismissed.

15. It Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

September 08, 2023

(Sushil Kukreja)
Judge

(raman)