

Sandeep Kumar Mehta Son Of Shri vs State Of Uttar Pradesh & Anr on 22 September, 2022

Author: Sandeep Sharma

Bench: Sandeep Sharma

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 22nd DAY OF SEPTEMBER, 2022
BEFORE

HON'BLE MR. JUSTICE SANDEEP SHARMA

CRIMINAL MISC.PETITION (MAIN) No. 975 OF 2022

Between:

SANDEEP KUMAR MEHTA SON OF SHRI
BISHAN SINGH MEHTA RESIDENT OF
VILLAGE AND POST OFFICE MANDHOL,
TEHSIL JUBBAL, DISTRICT SHIMLA, H.P.

....PETITIONER

(BY MR. AJAY KOCHHAR, MR. VIVEK
SHARMA, MS. AVNI KOCHHAR MR.
BHAIRAV GUPTA & ANUBHAV CHOPRA,
ADVOCATES.)

AND
STATE OF HIMACHAL PRADESH

....RESPONDENT

(BY MR. SUDHIR BHATNAGAR
ADDITIONAL ADVOCATE GENERAL)

(MR. BIMAL GUPTA, SR. ADVOCATE WITH

MR. GURVINDER PARMAR ADVOCATE FOR
THE COMPLAINANT JITENDER SINGH

KATAIK)

(MR. NARENDER SHARMA, ADVOCATE,

FOR BALBIR BANTA)

INSP. RAMA NAND, CID, BHARARI, IS
PRESENT IN PERSON.

Whether approved for reporting? Yes.

This petition coming on for orders this day, the Court passed
the following:

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ORDER

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By way of instant petition filed under Section 439 Cr.PC, prayer came to be made on behalf of bail petitioner, namely, Sandeep Kumar Mehta, who was behind the bars since 13.11.2021, for the grant of regular bail, in case FIR No. 36/2020, dated 19.10.2020, under Sections 420, 406 and 506 of IPC,

registered at Police Station CID, Shimla.

2. Pursuant to notices issued vide order dated 06.05.2022, respondent-State filed the status report, perusal whereof revealed that on 19.10.2020 complainant, namely, Shri Ramlal Chauhan, lodged a complaint at Police Station, CID Shimla, H.P., alleging therein that in the year 2015 he sold 85 apple boxes to Mahasu Apple Trades, Shop No. 44, New Sabzi Mandi, Solan, proprietor whereof was present bail petitioner Sandeep Kumar Mehta. Complainant alleged that 85 boxes of apple were sold for Rs. 68,500/- but such payment was never made to him. He also alleged that in the year 2015, bail petitioner assured him that he would make the payment and as such, again sent him 324 boxes for total consideration of Rs.2,74,000/-, but the fact remains that no payment ever came to be made to him by the bail petitioner. In the aforesaid background, FIR detailed hereinabove came to be lodged against the bail petitioner, pending investigation, Special Investigating Team (SIT) was constituted by the CID for investigating the cases of cheating/fraud committed by various commission agents against apple .

growers, wherein it was found that the present bail petitioner not only cheated the complainant named herein above, but other apple growers also. Investigation also revealed that present bail petitioner purchased apple crops from various apple growers having market value of Rs.6,78,63,120/- between year 2015-2020, but never made any payment. Though, with a view to discharge his liability, bail petitioner issued cheques but the same were also dishonoured, as a consequence of which, proceedings under Section 138 of Negotiable Instruments Act are pending against him in various courts of law. The bail petitioner remained absconded and he could only be arrested on 13.11.2021 and since then he was behind the bars till the time he was enlarged on interim bail vide order dated 27.5.2022 enabling him to make the payment to the complainant as well as other persons named in the FIR.

3. On 27.5.2022, Mr. Ajay Kochhar, learned counsel representing the bail petitioner, assured this Court that payment of all persons named in the FIR except two persons, namely, Balbir Banta and Jitender Singh Kataik, shall be cleared by the petitioner, provided he is given some time. Having taken note of the fact that these allegations of cheating/fraud, if any, committed by the bail petitioner pertained to the year 2015, but the FIR came to be lodged in the year 2020, this Court enlarged the bail petitioner on interim bail after having recorded his undertaking that on or before the next date of hearing, he would try to settle the matter with all the persons named in the FIR.

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4. On 30.08.2022, learned counsel representing the petitioner apprised this Court that the bail petitioner paid a sum of Rs. 70.00 lac to the various apple growers. To prove the aforesaid fact, he also placed on record the list showing details of amount paid to such apple growers.

5. On the same day i.e. 30.8.2022, Mr. Bimal Gupta, learned Senior Advocate, appeared on behalf of one of the complainant Shri Jitender Singh Kataik, to whom the bail petitioner allegedly owes Rs. 3.5 Crore. Mr. Gupta stated that on account of non-payment of amount by the bail petitioner, his client is facing criminal cases. He also reminded this Court of the fact that the bail petition filed by

Shri Jitender Singh Kataik on account of lodging FIR against him, was also not entertained by this Court. Since, Mr. Ajay Kochhar, learned counsel representing the petitioner assured this Court that the petitioner would sit with Mr. Jitender Singh Kataik and shall pay the undisputed amount, this court adjourned the case for today's date.

6. Today, Mr. Ajay Kochhar, learned counsel representing the petitioner informed this Court that the undisputed amount i.e. Rs. 55 lacs has been settled by petitioner with Jitender Singh Kataik and in that regard payments are being made directly to the apple growers from whom Shri Jitender Singh Kataik had purchased the crop. He also furnished details of the cheques, which is reproduced herein below:-

1. Cheque No. 923871 amounting to Rs. 7.5 lacs
2. Cheque No. 923872 amounting to Rs. 7.5 lacs
3. Cheque No. 923873 amounting to Rs. 7.5 lacs
4. Cheque No. 923874 amounting to Rs. 7.5 lacs.

7. Mr. Bimal Gupta, learned Senior Advocate representing complainant, Jitender Singh Kataik seriously disputed the claim of the petitioner with regard to the fact that undisputed amount of Rs. 55 lac has been settled. He stated that the bail petitioner owes more than Rs. 3 crores. The Investigating Officer present in the Court fairly acknowledged the factum with regard to settlement arrived inter-se 6 persons named in the FIR with petitioner Shri Sandeep Kumar Mehta. He stated that apart from 6 persons as named in the FIR, there are many persons to whom Mr. Sandeep Kumar Mehta is yet to pay huge amount. However, he fairly stated that the challan in the FIR, which is a subject matter of the case stands filed in the competent court of law and therein charges already stands framed against the bail petitioner.

8. Mr. Sudhir Bhatnagar, learned Additional Advocate General while fairly admitting the factum with regard to filing of challan in the competent court of law contended that since huge money is yet to be recovered from the bail petitioner, it would not be in the interest of justice to confirm the interim bail granted in favour of the petitioner vide order dated 27.05.2022. He stated that the investigation conducted by the SIT reveals that the bail petitioner has not only cheated 6 persons, but has duped many innocent apple growers, who are now compelled to .

approach the Court. He stated that since cheques given by the bail petitioner with a view to discharge his liability already stand dishonoured, it would not be in the interest of justice to accept the undertaking being given by the bail petitioner that he would settle the matter with the remaining orchardists.

9. Mr. Ajay Kochhar, learned counsel representing the petitioner submitted that since challan stands filed in the competent court of law and all the six complainants named in the FIR have been given their dues by the bail petitioner, no fruitful purpose would be served by sending the bail petitioner behind the bars for indefinite period, who has not only tried to settle the dispute with the complainants but other persons also. He further stated that if the bail petitioner is sent behind the bars, chances of further payment, if any, by the bail petitioner to other apple growers would diminish, rather in the event of his being enlarged on bail, he may arrange the money and thereafter the same may be given to the apple growers, from whom he allegedly purchased the crop.

He further submitted that father of the petitioner Shri Bishan Singh Mehta has issued four cheques to discharge the liability of his son, who had allegedly taken crop of 6 apple growers through one of the complainant Shri Jintender Singh Katiak.

10. At this stage, Mr. Narender Sharma, Advocate, representing one of the complainant Shri Balbir Banta while opposing the prayer .

made on behalf of the petitioner submitted that threats are being extended to his client by the bail petitioner.

11. Having heard learned counsel representing the parties and perused the material available on record, this Court finds that initially complaint came to be made by one of the complainant, namely, Ram Lal Chauhan at Police Station, CID Shimla alleging therein that he had sold 85 apple boxes to Mahasu Apple Trades, Proprietor whereof was present bail petitioner. He alleged that apart from selling 85 apple boxes in the year 2015, he sent 324 apple boxes for total consideration of Rs.

2,74,000/-, but till date he was not paid even a single penny. However, during investigation few other persons, six in number lodged complaint against the petitioner that they have also been duped and despite repeated requests they are not being paid their amount. As has been noticed herein above pursuant to order dated 27.05.2022, bail petitioner was enlarged on interim bail enabling him to settle the amount with the complainant. The bail petitioner has arrived at some settlement with six persons named in the FIR, whereby he has made certain payments to these complainants, which fact has been duly acknowledged by the Investigating Officer present in the Court. It also emerges from the record that apart from six persons, father of the petitioner has also issued four cheques in the open Court in the name of four Apple Growers, who had sold their crop to complainant Jitender Singh Katiak. Since, challan stands filed in the competent court of law and number of cases under .

the Negotiable Instruments Act are pending against the bail petitioner on account of dishonouring of the cheques issued by him to various complainants, there appears to be no reason for this court to curtail the freedom of petitioner during trial, especially when he with a view to show his bonafide has approached many complainants and has settled the dispute with them. Otherwise also, this Court is of the view that quantum of amount, if any, payable by the bail petitioner to the complainants cannot be ascertained in these proceedings, especially when there is a dispute qua the same. Otherwise also, amount, if any, to be paid by the bail petitioner cannot be recovered in criminal proceedings, probably in that regard, complainants may have to approach appropriate

court of law.

Needless to say that criminal proceedings cannot be used to extract the money, which can be otherwise recovered by way of civil proceedings.

Moreover, this court finds that petitioner after being enlarged on interim bail, vide order dated 27.5.2022 has made sincere efforts to clear the outstanding dues, if any, of the complainants.

12. Though, the case at hand is to be decided by the competent court of law taking into consideration all the facts and evidence collected on record by the Investigating Agency, but having taken note of nature of dispute, which is purely civil in nature, this court sees no reason to curtail the liberty of the bail petitioner during trial, who otherwise shall remain available as has been undertaken by him.

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13. Hon'ble Apex Court as well as this Court have held in a catena of judgments that one is deemed to be innocent, till the time his/her guilt is proved in accordance with law, as such, there is no justifi-

cation to let bail petitioner incarcerate in jail for an indefinite period dur-

ing trial, especially when challan stands filed in competent court of law.

Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from jus-

tice, can be best met by putting the bail petitioner to stringent conditions.

14. 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 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:

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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*.

15. 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."

16. 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.

17. 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.

18. In view of above, bail petitioner has carved out a case for .

himself. Consequently, present petition is allowed and order dated 27.5.2022 granting interim bail to the petitioner is made absolute subject to his furnishing fresh bail bonds in the sum of Rs.10.00 lac with two local sureties in the like amount, to the satisfaction of the learned trial Court within one week, 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 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.

19. It is clarified that if the petitioner misuses the liberty or vio-

late any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

20. 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 alone. The petition stands accordingly disposed of.

21. The petitioner is permitted to produce copy of order downloaded from the High Court website and the trial Court shall not .

insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

22nd September, 2022

(Sandeep Sharma)

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