

Balram Singh vs State Of Himachal Pradesh on 10 December, 2020

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No.1947 of 2020

Decided on: 10.12.2020

Balram Singh

Versus

State of Himachal Pradesh

.....Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1

For the Petitioner

:

Mr. A.K. Sharma, Advocate.

For the Respondent

:

Mr. Sudhir Bhatnagar, Additional
Advocate Generals with Mr. Kunal
Thakur, Deputy Advocate General.

Sandeep Sharma, Judge (oral):

Through Video Conferencing Bail petitioner namely Balram, who is behind the bars since 22.7.2020, has approached this Court in the instant proceedings filed under Section 439 Cr.PC, praying therein to grant of regular bail in case FIR No. 194 of 2020, dated 22.06.2020, under Sections 498-A, 304-B and Section 34 of IPC, registered at Police Station Nalagarh, District Solan, Himachal Pradesh.

2. Respondent-State has filed status report in terms of order dated 3.11.2020, perusal whereof reveals that on 22.6.2020, complainant Maheshwari Devi, who happened to be mother of deceased Smt. Pinki 1 Whether the reporters of the local papers may be allowed to see the judgment?

Devi, wife of present bail petitioner, lodged a complaint at Police Station Nalagarh, District Solan, alleging therein that on 21.6.2020, she along with .

other family members went to village Sned, Tehsil Nalagarh after having received intimation with regard to death of her daughter Pinki Devi, wife of Balram. She alleged that her deceased daughter was found to be hanging on tree and she was informed that she has committed suicide.

Above named complainant alleged that since her deceased daughter was being constantly tortured and harassed by the bail petitioner and his other family members on account of bringing less dowry, she has committed suicide and as such, appropriate action in accordance with law be taken against them. Record reveals that initially police lodged the case under Sections 498-A, 304-B and Section 34 of IPC, on the basis of statements made by father and grand-father of deceased, wherein they did not raise finger of suspicion against anybody with regard to untimely death of their daughter and grand-daughter, respectively, but subsequently, case under Sections 498-A, 304-B and Section 34 of IPC came to be registered against the bail petitioner and other family members, on the basis of aforesaid complaint lodged by the mother of deceased Pinki Devi. Since, 22.7.2020, bail petitioner is behind the bars, whereas, other co-accused namely, Gurdev Singh, Saravjeet Kaur and Saroj stand enlarged on bail vide judgment dated 28.08.2020, passed by this Court in Cr.MP(M) Nos. 1315 & 1317 of 2020.

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3. Mr. Sudhir Bhatnagar, learned Additional Advocate General while fairly admitting the factum with regard to grant to anticipatory bail to other co-accused named hereinabove, contends that though, at this stage, nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of the offence alleged to have been committed by bail petitioner, he does not deserves any leniency. Mr. Bhatnagar while referring to status report submits that there is overwhelming evidence available on record suggestive of the fact that present bail petitioner is the main accused, who constantly harassed and mentally tortured his wife deceased Pinki Devi on account of bringing less dowry. Mr. Bhatnagar, while referring the statement made by the complainant, contends that immediately before alleged incident, bail petitioner had demanded car from the parents of deceased and as such, it can be safely inferred that victim-prosecutrix committed suicide on account of constant harassment caused to her by the bail petitioner and other family members and as such, prayer having been made on behalf of the bail petitioner for grant of bail may kindly be rejected.

4. Having heard learned counsel for the parties and perused the material available on record, this Court finds that immediately after .

alleged incident, Investigating Agency had recorded the statements of father and grand-father of deceased Pinki Devi and in their statements, they did not raise finger of suspicion towards bail

petitioner and other family members. In their statements as referred above, at no point of time, father of deceased alleged that deceased Pinki was being harassed constantly by the bail petitioner and other family members. In the aforesaid background, this Court vide judgment dated 28.8.2020, passed in Cr.MP(M) Nos. 1315 & 1317 of 2020, enlarged other the co-accused namely Gurdev Singh, Saravjeet Kaur and Saroj on bail. Though, status report reveals that immediately after marriage, certain differences had cropped inter se petitioner and his deceased wife, but definitely, there is no material worth credence available on record suggestive of the fact that during this period complaint, if any, ever came to be lodged at the behest of deceased Pinki Devi or her parents with regard to illegal demand of dowry allegedly made by the bail petitioner and his other family members.

No suicide note ever came to be recovered from the spot where deceased Pinki Devi committed suicide and as such, it would be too premature to conclude the complicity, if any, of the bail petitioner in the case at hand, that too, on the basis of statements made by parents of deceased Pinki Devi. Though, complainant, who happened to be mother of deceased has levelled serious allegations of demand of dowry against the bail .

petitioner and other co-accused, but same are yet to be proved in accordance with law by leading cogent and convincing evidence and as such, cannot be made basis, at this stage, to reject the prayer having been made by the bail petitioner for grant of bail, especially, when father and grand-father of deceased in their initial statements made to police prior to lodging of complaint by mother of victim-prosecutrix did not state anything specific with regard to demand of dowry or maltreatment by the bail petitioner or other family members. Otherwise also, this Court is unable to find out anything in the status report or record with regard to statements, if any, made by independent witnesses, save and except, near relations of deceased, suggestive of the fact that deceased was being constantly harassed by her-in-laws on account of bringing less dowry. Moreover, this Court finds that as per own statement of complainant, victim after two months of her marriage had returned to her parental house, but after sometime, she herself called her husband, i.e. bail petitioner to take her back to her matrimonial place and as such, there appears to be considerable force in the submissions of Mr. A.K. Sharma, learned counsel representing the petitioner that if relations inter se deceased and bail petitioner were not good, there was no occasion for deceased to call her husband to take her back to her matrimonial house.

Though, aforesaid aspects of the matter are to be considered by the court .

below in totality of evidence collected on record by Investigating Agency, but having taken note of the aforesaid aspects of the matter, there appears to be no justification to keep the bail petitioner behind the bars for an indefinite period during the trial, especially, when nothing remains to be recovered from him. This Court cannot also lose sight of the fact that other co-accused stand enlarged on bail. By now, it is well settled law that one is deemed to be innocent till his/her guilt is not proved in accordance with law and as such, it would not be fair to curtail freedom of bail petitioner for indefinite period during trial. Apprehension expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting him to the stringent conditions.

5. Reliance is placed on judgment passed by the Hon'ble Apex Court in case titled Umarmia Alias Mamumia v. State of Gujarat, (2017) 2 SCC 731, relevant para whereof has been reproduced herein below:-

"11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v.

Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of .

the completion of the trial at the earliest.

(See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC 569). Apprehension expressed by learned Deputy Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting him to the stringent conditions. As has been taken note herein above, as per medical opinion rendered by the medical officer, victim suffered serious injuries in the alleged incident but since victim stands discharged from the hospital and he is hale and hearty, this court sees no impediment in accepting the prayer made by the bail petitioner for grant of bail.

6. 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."

7. In Manoranjana Sinh Alias Gupta versus CBI 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

" This Court in Sanjay Chandra v. CBI, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that 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 found guilty. It was underlined that the object of bail is neither punitive or preventive. This Court sounded a caveat 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 a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him to taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused .

pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care ad caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and the grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

8. 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.

9. 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 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*.

10. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with 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.

(e) He shall handover passport to the Investigating Agency.

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

12. 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.

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(Sandeep Sharma) Judge 10h December, 2020 (reena)