

Binder Singh vs State Of Himachal Pradesh on 18 December, 2020

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) Nos. 2195, 2196, 2197 and 2198 of 2020

Decided on: 18.12.2020

1. Cr.MP(M) No.2195 of 2020
Binder Singh

.....

Versus

State of Himachal Pradesh

.....Respondent

2. Cr.MP(M) No.2196 of 2020
Kaptan Singh

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

3. Cr.MP(M) No.2197 of 2020
Mamta Devi

.....

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Versus

State of Himachal Pradesh

.....

4. Cr.MP(M) No.2198 of 2020
Leela Pati

.....

Versus

State of Himachal Pradesh

.....

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1 Yes.

For the Petitioner(s) : Mr. Raj Negi, Advocate, through Video Conferencing.

For the Respondent(s). Mr. Arvind Sharma, Additional Advocate
: General with Mr. Kunal Thakur, Deputy Advocate General, through Video Conferencing.

1
Whether the reporters of the local papers may be allowed to see the judgment?

::: Downloaded on - 21/12/20

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Sandeep Sharma, Judge (oral):

Sequel to order(s) dated 14.12.2020 passed by this Court in .

above captioned bail petitions, whereby petitioners were ordered to be enlarged on interim bail in connection with FIR No. 153 of 2020 dated 10.12.2020 under Section 306 read with Section 34 of IPC, registered with Police Station Rohru, District Shimla, HP, respondent-State has filed the status report prepared on the basis of investigation carried out by the Investigating Agency.

2. Record/status report made available to this Court reveals that on 10.12.2020, complainant Yashwant Singh, who happened to be son of the deceased, lodged a complaint at PS Rohru, District Shimla, stating therein that on 9.12.2020, at 8:00AM, his father had come towards Rohru alongwith his mother. Complainant disclosed to the police that his mother after getting herself checked up at private clinic and finishing his personal work in Cooperative Bank Rohru, came back to the village, but his father did not return and his mobile was also switched off. He alleged that on 10.12.2020, he along with his uncle Promod and cousin Robin went for the search of his father, who was subsequently found lying unconscious at a place called Khaatal and froth was coming out of his mouth. The complainant alleged that in the year, 2015, he had solemnized marriage with one of the bail petitioner Mamta, and out of their wedlock, one son was born, but on account of certain differences, she had started living separately. He alleged that on 28.11.2020, above named bail petitioner .

Mamta lodged a complaint at PS Rohru alleging therein that she is being harassed by her husband and in laws, as a consequence of which, police had come to his house. He also alleged that the bail petitioner Mamta had also registered case under Domestic Violence Act against him as well as other family members. He alleged that on 30.11.2020, bail petitioner Mamta alongwith her parents had come to his house and abused the parents and as such, his father on 9.12.2020, went towards boundary of village Khaatal. Police also recovered suicide note from the pocket of deceased father of the complainant, wherein he had written that the bail petitioner Mamta and her parents are responsible for his death. In the aforesaid background, FIR detailed herein above, came to be lodged against the above named bail petitioners.

3. Mr. Arvind Sharma, learned Additional Advocate General, while fairly admitting factum with regard to joining of investigation by the bail petitioners contends that though in terms of order passed by this Court, petitioners have joined the investigation, but keeping in view the gravity of offence alleged to have been committed by the bail petitioners, they do not deserve any leniency and as such, prayer made on their behalf for grant of bail may be rejected outrightly.

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

who happened to be daughter in law of the deceased had lodged some complaint at PS Rohru against the deceased and his family members, as a consequence of which, deceased was under great mental pressure.

Investigation reveals that bail petitioner Mamta on account of certain differences with her husband and other members of family had started residing separately at Rohru, but during this period, certain complaints were lodged by her in the police as well as in the court of law under Domestic Violence Act. Though effort was made by the police as well as other relatives for amicable settlement inte-se parties, but as per investigation, bail petitioner Mamta was not ready to settle her dispute amicably with her husband as well as other family members.

5. Though suicide note allegedly recovered from the person of the deceased suggests that he committed suicide after being harassed and tortured by the bail petitioners, but that is not sufficient to conclude the complicity, if any, of the bail petitioners in the alleged crime because as per own statement of the complainant recorded under Section 154 Cr.C, his father was under tremendous pressure on account of registration of cases against him as well as other family members. Though there is mention in the status report that despite there being effort made by the respectable members of the family , bail petitioner Mamta was not ready to settle the matter, but that attitude, if any, of her cannot be construed .

to be instigation, if any, on her part to the deceased, who admittedly committed suicide after registration of cases against his son, and other family members. There is no evidence that bail petitioner prompted/instigated the deceased to consume poison for finishing his life.

Otherwise also, she being aggrieved, if any, on account of mental harassment and cruelty is well within her rights to approach police or any court of law and that could not be a reason for the deceased to commit suicide.

6. Though aforesaid aspects of the matter are to be considered and decided by the court below on the basis of totality of evidence collected on record by the Investigating Agency, but having taken note of aforesaid aspect of the matter, there is no reason for custodial interrogation of the bail petitioners, who have otherwise joined the investigation. Hon'ble Apex Court as well as this Court in catena of judgments have repeatedly held that one is deemed to be innocent till the time his/her guilt is proved in accordance with law and as such, there appears to be no justification to curtail the freedom of the bail petitioner indefinitely during trial especially, when nothing remains to be recovered from them

7. 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.

r Hon'ble Apex Court has 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*.

8. 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.

9. 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."

10. 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 and 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."

11. 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.

12. Consequently, in view of the above, order(s) dated 14.12.2020, passed by this Court, is made absolute, subject to following .

conditions:

a. They shall make themselves 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. They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever; c. They shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the Police Officer; and d. They shall not leave the territory of India without the prior permission of the Court.

13. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

14. Any observations made hereinabove shall not be construed to be a reflection on the merits of the cases and shall remain confined to the disposal of these applications alone.

The bail petitions stand disposed of accordingly.

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18th December, 2020
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(Sandeep Sharma),
Judge