

---

## vs State Of Himachal Pradesh on 24 March, 2018

**Author: Sandeep Sharma**

**Bench: Sandeep Sharma**

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.202 of 2018

Date of Decision No.24.03.2018

-----  
Pritam Kumar

-----  
..... Petitioner

Versus

State of Himachal Pradesh

.....Respondent.

-----  
Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? 1

For the petitioner: Mr. Sheetal Vyas, Advocate.

For the respondent:

General.

Mr. Dinesh Thakur, Additional Advocate

-----  
Sandeep Sharma, Judge (oral):

Bail petitioner, namely Pritam Kumar, who is in judicial custody since 2.1.2018, has approached this Court for grant of regular bail under Section 439 of the Code of Criminal Procedure in case FIR No.3 of 2018, dated 2.1.2018, under Sections 363, 366-A of the Indian Penal Code, registered at Police

Station, Bhoranj, District Hamirpur, Himachal Pradesh.

2. Sequel to order dated 6.03.2018, ASI Balbir Singh, Police Station, Bhoranj, has come present in Court alongwith the record of the case. Record perused and returned.

3. Mr. Dinesh Thakur, learned Additional Advocate General, has also placed on record status report prepared on the basis of the investigation carried out by the investigating agency, Whether the reporters of the local papers may be allowed to see the judgment?

perusal whereof, suggest that FIR, detailed hereinabove, came to be lodged at the behest of the complainant, namely Amrit Lal, who alleged that her minor niece namely Ms. Ranjana Devi has been .

kidnapped by the present bail petitioner on 27.12.2017. Since, the girl, named above, did not return to her house on 27th December, 2017, complainant lodged aforesaid complaint against the bail petitioner. He alleged that his niece and bail petitioner were in constant touch with each other, but today bail petitioner taking undue advantage of innocence of her niece, who is minor, allured her on the pretext that he would marry her. On 2.1.2018, police found victim Ranjana Devi at Baldwara Bhambla Patarighat road.

Subsequently, on the same day, bail petitioner was arrested, however fact remains that victim refused to undergo medical test and she subsequently in her statement recorded under Section 164 of Code of Criminal Procedure before the learned Judicial Magistrate 1st Class, Court No. II, Hamirpur, categorically denied that she was kidnapped by the bail petitioner, rather she claimed that she had gone with her friend. She further stated before the learned JMFC that on 27th December, 2017 her aunt had abused her and as such, she went to the house of her maternal Uncle at Nawahi, whereafter on 28th December, 2017 she had gone to her friend's house at Bhukhar. Perusal of the aforesaid statement recorded under Section 164 Code of Criminal Procedure, nowhere suggests that the victim namely Ranjana Devi was kidnapped/enticed by the present bail petitioner.

4. Ms. Sheetal Vyas, learned counsel representing the .

bail petitioner, while referring to the record/status report, strenuously argued that no case is made out against the bail petitioner under Sections 363, 366-A of IPC and as such, he deserve to be enlarged on bail.

5. Mr. Dinesh Thakur, learned Additional Advocate General, fairly admitted that victim Ranjana Devi in her statement recorded under section 164 Code of Criminal Procedure, has nowhere stated that she was kidnapped by the bail petitioner, rather perusal of the same suggest that she of her own volition left the house of her Uncle and thereafter she went to the house of her maternal Uncle. Mr. Dinesh Thakur, learned Additional Advocate General, on the instructions of the investigating Officer, who is present in Court, contended that nothing is required to be recovered from the bail petitioner and as such, his custodial interrogation is not required and he can be ordered to be enlarged on bail subject to the condition that he shall make himself available for investigation and

trial as and when called by the investigating agency.

6. I have heard learned counsel representing the parties and carefully gone through the record made available.

7. Close scrutiny of the record, especially statement under Section 164 Code of Criminal Procedure, nowhere suggest that case, if any, is made out against the bail petitioner under .

Section 363 and 366-A of IPC and as such, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period, especially when he has already suffered more than two months, as is evident from the statement of the prosecutrix.

Otherwise also, challan stands filed in the competent Court of law.

8. It has been repeatedly held by the Hon'ble Apex Court that freedom of an individual cannot be curtailed for indefinite period as it is of utmost importance. Similarly, guilt, if any, of bail petitioner is yet to be proved in accordance with law and as such, prayer having been made by learned counsel for the petitioner for grant of bail deserves to be considered.

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 freedom of an individual is of utmost importance and same cannot be curtailed for indefinite period. Hon'ble Apex Court has further held that till the time guilt of accused is not proved in accordance with law, he is deemed to be innocent. The relevant paras No.2 to 5 of the 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. 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.

11. Law with regard to grant of bail is now well settled.

The apex Court in Siddharam Satlingappa Mhetre versus State of Maharashtra and others, (2011) 1 SCC 694, while relying upon its decision rendered by its Constitution Bench in Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565, laid down the following parameters for grant of bail:-

"111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of

anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused 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;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of .

genuineness that shall have to be 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."

(Emphasis supplied)

12. 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;

(viii) reasonable apprehension of the witnesses being influenced; and

(ix) danger, of course, of justice being thwarted by grant of bail.

13. 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 bonds in the sum of Rs 25,000/- with one local surety in the like amount to the satisfaction of concerned Judicial Magistrate, 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.

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

15. 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.

Copy dasti.

(Sandeep Sharma), Judge 24th March, 2018 (shankar)