

## Hasim vs Of on 25 September, 2023

**Author: Sushil Kukreja**

**Bench: Sushil Kukreja**

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA .

Cr. MP(M) No. 1605 of 2023 Reserved on : 29.08.2023 Decided on : 25.09.2023

\_\_\_\_\_ Hasim ....Petitioner Versus  
o f S t a t e o f H i m a c h a l P r a d e s h . . . . R e s p o n d e n t  
\_\_\_\_\_ Coram rt Hon'ble Mr. Justice  
S u s h i l K u k r e j a , J u d g e W h e t h e r a p p r o v e d f o r r e p o r t i n g ? 1  
\_\_\_\_\_ For the

Petitioner : Mr. N.K. Tomar, Advocate.

For the Respondent : Mr. Jitender Sharma, 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. 139/2022, dated 03.06.2022, under Sections 454, 380, 201 & 120-B of the Indian Penal Code (for short, 'IPC'), registered at Police Station Boileauganj, District Shimla, 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 04.06.2022, at about 8:45 P.M., the complainant, Karan Jaswal made a complaint at Police Post Shoghi regarding theft in his house.

It was further alleged in the complaint by the complainant that of on 31.05.2023, he left for Rajasthan while his parents had gone to left his sister at Delhi. On 03.07.2023, father of the rt complainant was informed by his neighbor that lock of their main door was broken. After receiving such information, on the next day, the complainant reached his house and saw that the bed box and almirah of both the rooms were opened and all the valuables were thrown out on the floor. On thorough inspection, it was found that one pair of gold tops with white stone, one pair of gold round tops with black stone, one locket of lord Krishna embedded, one pair of gold ear rings, white pearl tops of gold, one pair of dogari Jhumkiyan with stone, one diamond nose pin, two sets of gold necklace, which were antique and about 40 years old, one pair of upper ear pins of gold and all the tops that were in plastic box and necklace in cloth pouch were stolen. On 26.06.2022, the police of Police Station Chhota Shimla arrested four persons namely Imran, Ali Ahmad, Amir Khan and Hasim, who were .

involved in theft cases. During interrogation, accused Imran disclosed that he alongwith aforesaid accused persons have committed many thefts at different places and firstly they used to identify the places and then they used to commit theft of on those identify places. It was also admitted by the accused persons that on 03.06.2022, while they were going to Meerut, rt U.P., they stopped their car at HIMUDA colony Shoghi and committed theft in the house of the complainant.

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 in custody since his arrest, is required to be released on bail.

4. Per contra, the learned Additional Advocate 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 of have also gone through the record of the case. From the perusal of the record, I am of the firm opinion that the rt 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 the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima 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 of accused sub-serves the purpose of the criminal justice system. In Chaman Lal Vs. State of U.P. and Another, rt (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 alias Pappu Yadav and Another, (2004) 7 SCC 528, the Hon'ble Apex Court has held that the Court granting bail 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 of 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 of 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.

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*, (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;

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(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.

....."

of

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 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."

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 of 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 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, of 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 of 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 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 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."

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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 Jewellery in the house of the complainant.

The perusal of the record prima facie reveals that the rt 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. The petitioner alongwith other accused persons is involved in various theft cases and so many cases of theft have been registered against him.

Besides above, one case under the Arms Act as well as one case under the U.P. Gangsters and Anti-Social Activities (Prevention) Act have already been registered against the petitioner. Since the petitioner is a habitual offender, 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.

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

15. Be it stated that any expression of opinion given of 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 rt any observations made therein.

( Sushil Kukreja )

September 25, 2023  
(raman)

Judge