

Shri Munshi Ram vs State Of Uttar Pradesh & Anr. Decided on 16 March, 2022

Author: Sandeep Sharma

Bench: Sandeep Sharma

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
ON THE 16th OF MARCH, 2022
BEFORE HON'BLE MR. JUSTICE SANDEEP SHARMA

CRIMINAL MISC.PETITION (MAIN) NO.524 of 2022

Between: -

SHIVAM RANDHAWA, SON OF

SHRI MUNSHI RAM, RESIDENT
OF VILLAGE AND POST OFFICE
RAJAL, TEHSIL AND DISTRICT
KANGRA, HIMACHAL PRADESH.

.....PETITIONER

(BY MR.
ADVOCATE)

TARUN

r K. to
SHARMA,

AND

STATE OF HIMACHAL PRADESH

.....RESPONDENT

(BY MR. SHIV PAL MANHANS,
ADDITIONAL ADVOCATE GENERAL
WITH MR. BHUPENDER THAKUR

AND MR. YUDHVIR SINGH THAKUR,
DEPUTY ADVOCATE GENERALS

ASI PARDHAN SINGH, WOMEN
POLICE STATION DHARAMSHAL,

DISTRICT KANGRA, H.P., PRESENT
WITH RECORD)

Whether approved for reporting?

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

ORDER

Sequel to order dated 09.03.2022, whereby, petitioner was ordered to be enlarged on bail in case FIR No. 4 of 2022, dated 7.3.2022, under Sections 376 & 506 of IPC, registered at Police Station Dharamshala, District Kangra, H.P., respondent-State has filed status report, which is taken on record. ASI Pardhan Singh, Women Police .

Station, Dharamshala, District Kangra, H.P. has also come present with record, which is perused and returned.

2. Close scrutiny of the record of investigation as well as status report made available to this Court, reveals that on 7.1.2022, victim/prosecutrix, aged 24 years (name withheld) lodged a complaint in Women Police Station, Dharamshala, District Kangra, H.P., alleging therein that in the month of October, 2020, bail petitioner, r who is working in Army came in her contact. She alleged that bail petitioner used to talk to her daily on her phone. She alleged that on 10 th September, 2021, bail petitioner called her in a hotel situate at Khaniyara, Dharamshala and sexually assaulted her against her wishes on the pretext of marriage. She alleged that bail petitioner had told her as well as her family members that he would solemnize marriage with her in the year, 2023, but now, he refused

to solemnize the marriage. She alleged that on 4 th March, 2022 also, bail petitioner had asked for two day time to think, but now on 7 th March, 2022, he refused to solemnize marriage and as such, appropriate action in accordance with law be taken against him. In the aforesaid background, FIR as detailed hereinabove, came to be lodged against the present bail petitioner, who otherwise pursuant to order dated 9.3.2022, has already joined the investigation.

3. Since, investigation in the case is complete and nothing remains to be recovered from the bail petitioner, prayer has been made on his behalf for confirmation of the interim bail, granted by this Court vide order dated 9.3.2022.

.

4. Mr. Yudhvair Singh Thakur, learned Deputy Advocate General, while fairly admitting the factum with regard to joining of investigation by the bail petitioner pursuant to order dated 9.3.2022, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of the offences alleged to have been committed by him, he doesn't deserve any leniency. Mr. Thakur, further contends that since bail petitioner despite his being member of armed forces has indulged in serious crime punishable under Section 376 of IPC, it may not be in the interest of justice to enlarge him on bail, who otherwise in the event of being enlarged on bail, may not only flee from justice, but may also cause harm to the victim/prosecutrix and as such, prayer made on his behalf for grant of bail deserves to be rejected outrightly.

5. Having heard learned counsel for the parties and perused the material available on record, especially statement of victim/prosecutrix recorded under Section 164 Cr.P.C, this Court finds that victim/prosecutrix of her own volition and without there being any external pressure joined the company of the bail petitioner. As per her own statement, she was in constant touch with bail petitioner since October, 2020 and since then, they had been meeting frequently. Even on 10th September, 2021, victim/prosecutrix of her volition went to a hotel situate in Khaniyara along with bail petitioner. Though, victim/prosecutrix has complained that in a hotel, she was sexually assaulted against her wishes on the pretext of marriage, but if the statement made by her under Section 154 Cr.P.C, if read in its entirety, .

clearly reveals that she of her own volition had been repeatedly joining the company of bail petitioner on the pretext of marriage. Since, victim/prosecutrix is 24 years old, it cannot be said that bail petitioner taking undue advantage of her innocence, exploited her. First incident of sexual intercourse against the wishes of victim/prosecutrix allegedly happened on 10th September, 2021, but there is no document available on record suggestive of the fact that victim/prosecutrix made an attempt to lodge complaint, if any, against the bail petitioner.

Admittedly, FIR against the bail petitioner came to be lodged on 7.3.2022 after inordinate delay of 5 months and there is no plausible explanation rendered on record qua the delay in lodging of FIR.

6. Though, case at hand is to be considered and decided by the court below on the basis of totality of facts and evidence collected on record by Investigating Agency, but keeping in view aforesaid glaring

aspects of the matter, this Court sees to reason for further custodial interrogation of bail petitioner, who otherwise pursuant to order 9.3.2022, has made himself available for investigation. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time, guilt, if any, of his/her is not proved in accordance with law. Since, guilt, if any, of the bail petitioner is yet to be established on record by Investigating Agency, by leading cogent and convincing evidence, this Court sees no reason to curtail the freedom of the petitioner for an indefinite period during trial, especially, when he being Govt. employee shall always remain available for investigation and trial. Apprehension expressed by .

the learned Deputy Advocate General that in the event of being enlarged on bail, bail petitioner may flee from justice or tamper with prosecution evidence, can be best met by putting the bail petitioner to stringent conditions.

7. Otherwise also, Hon'ble Apex Court and this Court have repeatedly held that till the time, guilt of an individual is proved in accordance with, he/she is deemed to be innocent. In the case at hand guilt, if any, of the bail petitioner, is yet to be determined in the totality of the evidence collected on record by the prosecution.

8. 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 held that freedom of an individual can not be curtailed for indefinite period, especially when his/her guilt is yet to be proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

9. By now it is well settled that gravity alone cannot be a decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The Hon'ble Apex Court in Sanjay Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49;

has held that the object of bail is neither punitive nor preventative.

10. 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 also, normal rule is of bail and not jail. Apart from above, 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. In Manoranjana Sinh alias Gupta versus CBI, (2017) 5 SCC 218, Hon'ble Apex Court has held that the detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution. Apex Court in Prasanta Kumar Sarkar versus Ashis Chatterjee and

another (2010) 14 SCC 496, has laid down the broad principles to be kept in mind, while deciding petition for bail, viz. prima facie case against accused, gravity of offence, severity of punishment, danger of the accused absconding, antecedents of accused and apprehension of influencing the witnesses etc.

12. In view of above, bail petitioner has carved out a case for himself, consequently, present petition is allowed. Order dated 09.03.2022, is made absolute, subject to bail petitioner furnishing fresh bail bonds in the sum of Rs.1,00,000/- with one local surety in the like amount, to the satisfaction of the Trial Court, besides the following conditions:

a. He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial 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.

13. 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.

14. 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 petition alone.

The petition stands accordingly disposed of.

Copy dasti.

(Sandeep Sharma) Judge 16th March, 2021 (reena)