

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
Cr.MP(M) No1465 of 2017.
Decided on: 12.12.2017.

Varinder 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. Satyen Vaidya, Senior Advocate along with Mr. Vivek Sharma, Advocate.

For the respondent: Mr. P.M. Negi, Additional Advocate General and Mr. Rajinder Kumar Sharma, Deputy Advocate General. ASI Vijay Singh, Police Station Sadar, District Una, H.P., present along with record.

Sandeep Sharma, Judge (oral):

By way of instant bail petition filed under Section 439 of the Code of Criminal Procedure, a prayer has been made for grant of regular bail in case FIR No. 246/2017, dated 10.8.2017, under Sections 302, 341, 323 read with Section 34 and 109 IPC, registered at Police Station, Sadar, District Una, Himachal Pradesh.

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

2. Sequel to order dated 5.12.2017, ASI Vijay Singh, Police Station Sadar, District Una, has come present in Court alongwith the record of the case. Mr. P.M. Negi, learned Additional Advocate General, has also placed on record status report prepared on the basis of the investigation carried out by the Investigating Agency. Record perused and returned.

3. Careful perusal of the record/status report, suggests that FIR, as mentioned hereinabove, came to be registered against the bail petitioner and his two sons namely Sheetal and Mohit at the behest of complainant Satyem Sharma, who in his statement recorded under Section 154 Cr.P.C., on 10th August, 2017, stated that he and his father along with family, resides at Delhi Colony Chatara, District Una, for the last 6 months and is doing business of readymade garments. On 10th August, 2017, at about 6.30 P.M., when he along with his brother Shivam had gone to buy milk from shop at Chatara on his Motorcycle bearing No. PB08AD5468, two sons of bail petitioner stopped them and started giving them beatings, on the pretext that they have come from outside and indulging in vandalism. Though, complainant and his

brother tried to pacify them but they gave beatings to them with dandas and brick, as a result of which, complainant and his brother suffered grievous injuries. Subsequently, complainant and his brother Shivam, were taken to hospital where, unfortunately, brother of complainant namely Shivam succumbed to his injury. On the basis of aforesaid statement recorded under Section 154 Cr. P.C, formal FIR, as detailed hereinabove, came to be lodged against the accused Sheetal, Mohit and the present bail petitioner for commission of offence under Section 341, 323, 504, 34 and 109 IPC. Since, victim namely Shivam died after lodging of aforesaid FIR, case under Section 302 of IPC was subsequently registered against the bail petitioner and his two sons.

4. Mr. Satyen Vaidya, learned Senior Counsel, representing the bail petitioner, while inviting attention of this Court to the statement of complainant recorded under Section 154 Cr.P.C, on the basis of which, formal FIR came to be registered, vehemently contended that name of the bail petitioner was never mentioned by the complainant, at the first instance and as such, he has been falsely implicated by the police subsequently, on the basis of the statement made

by the complainant under Section 161 Cr.P.C. Mr. Vaidya, learned Senior counsel, further contended that bare perusal of the FIR, suggests that at the time of alleged incident, bail petitioner, who is father of other co-accused Sheetal and Mohit, was not present on the spot and as such, there was no occasion for him to provide dandas to the co-accused for giving beatings to the complainant as well as deceased Shivam. Mr. Vaidya, learned Senior counsel, further contended that there is no eye witness to the aforesaid incident and as such, no much reliance could be placed upon the story concocted by the prosecution to falsely implicate to present bail petitioner. While making prayer to enlarge the bail petitioner on bail, Mr. Vaidya, learned Senior counsel, further contended that since his two sons are already in judicial lockup, there is no one at home to take care of his wife and daughter. While inviting attention of this Court to medical record of bail petitioner placed on record, Mr. Vaidya, contended that present bail petitioner, who is 54 years old, is suffering with cardiac disease and he has already undergone surgery. Lastly, Mr. Vaidya, learned Senior counsel, contended that bail petitioner being local resident of the

area, shall remain always available for investigation and trial and there is no likelihood of his fleeing from justice and as such, he deserves to be enlarged on bail.

5. Mr. P.M. Negi, learned Additional Advocate General, while opposing the aforesaid prayer, having been made by the learned Senior counsel, for grant of bail, strenuously argued that keeping in view the gravity of offence, allegedly committed by the bail petitioner, he does not deserve to be enlarged on bail, rather, his enlargement on bail, at this stage, would send wrong message to the society. Mr. Negi, while refuting the aforesaid arguments, having been made by the learned senior counsel, contended that omission, if any, on the part of complainant to mention the name of bail petitioner, at the time of lodging of FIR, may not be relevant to ascertain the guilt of the bail petitioner because, complainant in his statement under Section 161 Cr.P.C. has categorically stated that dandas were allegedly provided by the bail petitioner to other co-accused namely Sheetal and Mohit with the intention to give beatings to deceased Shivam and complainant Satyam. Mr. Negi, further contended that had present bail petitioner not instigated his

sons and not provided them with dandas, unfortunately, incident would have not occurred, wherein admittedly one person lost his life.

6. I have heard the learned counsel for the parties and gone through the record.

7. After having perused the record/status report, this Court is persuaded to agree with the contention of learned senior counsel, representing the petitioner that since there is no mention of name of present bail petitioner in the FIR 246/2017 i.e. first report submitted by the complainant against accused, no much reliance can be placed at subsequent statement made by the complainant under Section 161 Cr.P.C. Perusal of the statement made by the complainant under Section 154 Cr.P.C, on the basis of which, formal FIR came to inexistence, nowhere suggests that bail petitioner was also present at the spot of occurrence and as such, his presence on the spot of alleged incident, is itself doubtful.

8. True it is, that complainant in his subsequent statement recorded under Section 161 Cr.P.C, has named bail petitioner but at this stage, this Court after having perused the FIR, finds story of investigating agency to be not very

convincing as far as involvement of bail petitioner is concerned. Otherwise also, material collected by the investigating agency till date, suggests that deceased Shivam, died due to beatings allegedly given by co-accused Sheetal and Mohit, who are in judicial lockup. Challan has been filed by the investigating agency, wherein, present bail petitioner has charged under Section 109, read with Section 302 IPC, for instigating his sons to cause injuries to the deceased and the complainant. Though, aforesaid aspect of the matter is to be considered and decided by the learned court below on the basis of the evidence adduced on record by the prosecution, this Court after having carefully perused the record/status report as well as medical record of bail petitioner, sees no reason to allow him to incarcerate in jail for indefinite period, especially, when nothing is to be recovered from him at this stage. Nothing has been placed on record by the investigating agency from where, it can be inferred that it may be difficult to secure the presence of the bail petitioner during the trial and as such, this Court is of the view that he deserves to be enlarged on bail.

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 purpose of giving him a taste of imprisonment as a lesson.”

10. In **Manoranjana Sinh Alias Gupta** versus **CBI** 2017 (5) SCC 218, 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."

- 11.** 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. Petitioner is a local resident of the place mentioned in the application and he shall remain available to face the trial and to undergo imprisonment, if any, imposed upon him.

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, 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 furnishing personal bonds in the sum of Rs.1,00,000/- with one local surety in the like amount to the satisfaction of learned Chief Judicial Magistrate concerned, 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

12th December, 2017
(reena)

High Court of H.P.