
Naveen Singh Vs State Of Himachal Pradesh

Criminal Miscellaneous Petition (M) No. 51 Of 2021

Court: High Court Of Himachal Pradesh

Date of Decision: Feb. 4, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 437A, 439, 446

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: N.S. Chandel, Vinod Gupta, Sudhir Bhatnagar, Seema Sharma, Narinder Singh Thakur, Manoj Bagga

Final Decision: Allowed

Judgement

Anoop Chitkara, J

1. The petitioner (A-7), being arraigned as an accused for allegedly committing rape upon a female aged 32 years, incarcerating upon his arrest, has

come up before this Court under Section 439 Cr.PC, seeking regular bail.

2. Earlier, the petitioner had filed a petition under Section 439 Cr.PC before the concerned Sessions Court. However, vide order dated 27.11.2020,

learned Additional Sessions Judge-I, Kangra at Dharamshala, H.P., dismissed the petition on the grounds that there exists prima facie involvement of

the accused and because of the offence being heinous in nature.

3. The bail petition is silent about criminal history, however, Mr. N.S. Chandel, assisted by Mr. Vinod Gupta, learned counsel for the bail petitioner

states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on

conviction, the sentence imposed was more than three years.

4. Briefly, the allegations against the petitioner are that on 20.8.2020, the victim gave a written complaint to the SHO, Police Station, Gaggal, District

Kangra about her being raped by seven persons. The victim stated that she is aged 32 years and was married in the year, 2006. She had five children.

For the last five years, she stays in her maternal home. In the morning of 19.8.2020 at 7:00 a.m., she was going to the house of her Massi and when

she alighted from the bus at village Banoie, then she took charger from the shop of Panku @ Pankaj (A-4). Panku asked her to go Gaggal on the

scooty of Honey @ Ajeet Singh (A-1). Honey took her to his shop at Sanora. He called the car and made her board the car. He also sat with her in

the car. She asked them to drop her at Gaggal. But, they instead of dropping her at Gaggal, took her 2-3 kilometers ahead Rait in a room of a Poultry

Farm and bolted the room from inside, where Honey, his driver and one another person committed coitus with her, turn by turn. When she tried to cry,

then they were gagging her mouth. After that, they took her to Gaggal Airport. Honey called another vehicle, in which, Honey, Honey's material

brother and Panku took her to Mcleodganj in a hotel. In the room of the hotel, all three again committed coitus with her, turn by turn. Thereafter, two

more boys came there who did not do any wrong act with her. However, Rishu @ Rishi Kumar (A-6), asked her to take his Penis in her mouth.

Thereafter he forcibly put his penis in her mouth, but as blood was oozing out from her mouth, he ran away. After that, one another boy came, but he

did not do any sexual act with her. Thereafter, she escaped herself and reached the Police Station. On these allegations, the Police registered the FIR

mentioned above.

5. Mr. N.S. Chandel, learned Senior Advocate, assisted by Mr. Vinod Gupta, learned counsel for the petitioner contends that incarceration before the

proof of guilt would cause grave injustice to the petitioner and his family.

6. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to

very stringent conditions.

7. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can

be taken care of by imposing elaborative and stringent conditions. In Sushila Aggarwal, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that

unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

REASONING:

8. In the FIR, it is not clear that two persons did nothing with her. She is silent about those persons. The name of the petitioner does not figure in the

names of the accused against whom she alleged of having committed coitus or oral sex with her. Given the conduct of the victim being aged 32 years,

a married lady having children and well experienced about sexual acts, further incarceration is not at all justified.

9. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. Without

commenting on the merits of the case, the stage of the investigation and the period of incarceration already undergone would make out a case for bail.

10. While granting bail to the present petitioner, any further discussion about the evidence may cause prejudice to the prosecution or the victim. As

such, this Court is refraining itself to discuss the same.

11. In the facts and circumstances peculiar to this case, the petitioner makes out a case for release on bail.

12. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and

irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

13. In *Manish Lal Shrivastava v State of Himachal Pradesh*, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that

any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to

switch over to another.

14. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR

25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Judicial Magistrate having the jurisdiction over the Police Station

conducting the investigation, and in case of non-availability, any Ilaqa Magistrate. Before accepting the sureties, the concerned Magistrate must satisfy

that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind the

Jurisprudence behind the sureties, which is to secure the presence of the accused.

15. In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-), made

in favour of ""Chief Judicial Magistrate, District Kangra, H.P.,

a) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g.,

Bank of America, Chase, HSBC, City Bank, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal,

and liberty of the interest reverting to the linked account.

b) Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.

c) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

d) If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get

the online liquidation disabled.

e) The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information

be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR

number.

f) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.

g) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for

substitution of fixed deposit with surety bonds and vice-versa.

h) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be

endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC,

1973, or until discharged by substitution as the case may be.

16. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay

the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on

this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s),

WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall

immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers,

WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police

officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to

tamper with the evidence.

d) The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the

investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail.

Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall

not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of

summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any).

[Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July

10, 2020]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.

iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the

petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to

achieve the purpose.

17. The petitioner shall neither stare, stalk, make any gestures, remarks, call, contact, message the victim, either physically, or through phone call or

any other social media, nor roam around the victim's home.

18. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates

any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise,

the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

19. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of

this bail order, in vernacular and if not feasible, in Hindi.

20. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for

modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking

cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

21. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

22. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

23. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

24. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order from

the official web page of this Court and attest it to be a true copy. In case the attesting officer or the Court wants to verify the authenticity, such an

officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

The petition stands allowed in the terms mentioned above.