

Augustine Chibucike Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: March 30, 2021

Acts Referred: Constitution Of India, 1950 " Article 21

Code Of Criminal Procedure, 1973 " Section 160, 436, 436A, 439

Narcotic Drugs And Psychotropic Substances Act, 1985 " Section 21, 29, 37

Hon'ble Judges: Sandeep Sharma, J

Bench: Single Bench

Advocate: Kunal Thakur, Svaneel Jaswal

Final Decision: Disposed Of

Judgement

Sandeep Sharma, J

1. By way of present bail petition filed under Section 439 Cr.PC, prayer has been made on behalf of the bail petitioner namely Augustine Chibucike,

for grant of regular bail in FIR No. 99/18 dated 7.8.2018, under Sections 21 and 29 of the ND&PS Act, registered at Police Station Dharampur,

District Solan, Himachal Pradesh. Respondent State has filed the Status report in terms of order dated 8.3.2021. ASI Manohar Singh, I.O. P.S.

Dharampur, District Solan H.P., is also present with records. Records perused and returned.

2. Record/status report reveals that on 7.8.2018, police party present near Railway crossing at Sanwara, District Solan, H.P, stopped car bearing

registration No. HP-63-4619, for checking. Since driver and other occupants of the car got perplexed after having seen police, police in the presence

of the independent witnesses conducted personal search of the occupants as well as of the car and allegedly recovered 17 grams of heroin/chitta from

the dashboard of the vehicle. Since occupants of the vehicle were unable to render proper explanation qua the possession of the contraband as

referred above, police after completion of necessary codal formalities lodged FIR as detailed herein above. During investigation occupants of the car

disclosed to the police that they have purchased the aforesaid quantity of the contraband from Dwarka, Delhi, from person namely Yunis Khan and

present bail petitioner Augustine. On the basis of the aforesaid information furnished by the co-accused i.e. Pankaj, investigating agency visited Delhi

and served the bail petitioner as well as other co-accused Yunis Khan with notice under Section 160 Cr.PC, asking therein the above named persons

to remain present at concerned Police Station. Pursuant to aforesaid notice given by the police, both the accused visited police station on 11.8.2018.

Police on the basis of information furnished by the bail petitioner and Yunis Khan raided the house/quarter of the present bail petitioner at Dwarka

Delhi and allegedly, recovered 19.90 grams of Heroin/Chitta. Since 11.8.2018, present bail petitioner is behind bars, whereas another co-accused

Yunis Khan stands already enlarged on bail. Challan stands filed in the competent court of law and nothing remains to be recovered from the bail

petitioner. Since bail petitioner is behind the bars for more than two years, and prosecution evidence is yet to commence, bail petitioner has

approached this Court in the instant proceedings under the changed circumstances.

3. Mr. Kunal Thakur, learned Deputy Advocate General, while fairly admitting factum with regard to filing of challan in the competent court of law

contends that keeping in view the gravity of offence alleged to have been committed by the bail petitioner, he does not deserve any leniency and as

such, prayer made for grant of bail deserves to be rejected outrightly. Learned Deputy Advocate General submits that present bail petitioner is a drug

paddler and has been supplying the narcotics to young generation of the State and as such, it would be not in the interest of justice to enlarge him on

bail. Lastly, learned Deputy Advocate General contends that in the event of petitioners being enlarged of bail, he may not only flee from justice

but may also indulge in such like activities again and as such, his prayer for grant of bail may not be accepted.

4. Having heard learned counsel for the parties and perused the material available on record, this Court finds that on the date of the alleged incident,

police allegedly recovered 17 grams of heroin/chitta from the car bearing registration No. HP-63-4619, being driven by Sunil/Pankaj. Present bail

petitioner as well as other co-accused Yunis Khan came to be named in the FIR on the basis of alleged disclosure made by the above named

Sunil/Pankaj that he had purchased the contraband from Dwarka, Delhi. It is not in dispute that police on the basis of aforesaid disclosure made by the

co-accused Sunil-Pankaj visited Dwarka at Delhi and served the present bail petitioner and Yunis Khan with notice under Section 160 Cr.PC., to

remain present at PS Dharampur. It is also not in dispute that pursuant to aforesaid notice, both Yunis Khan and present bail petitioner made

themselves available for investigation at PS Dharampur on 11.8.2018. On the alleged disclosure made by the present bail petitioner and Yunis Khan,

police again raided the house/quarter of the bail petitioner and Yunis Khan at Dwarka, Delhi and allegedly recovered 19.90 grams of heroin/chitta, but

it is not understood that what prevented the investigating agency to raid the house of bail petitioner and Yunis Khan on 10.8.2018, when they had

initially visited the house of above named persons. Material available on record reveals that landlord of the premises in question, from where, allegedly

police recovered 19.90 grams of heroin/chitta, has categorically disclosed to the police that present bail petitioner and Yunish Khan have never been

his tenants, if it is so, recovery, if any, made from the premises at Dwarka cannot be said to have any link with the present bail petitioner and Yunis

Khan. There is no material worth credence available on record suggestive of the fact that premises, from where 19.90 grams of heroin/chitta came to

be recovered, belonged to the present bail petitioner. Learned Deputy Advocate General while inviting attention of this court to the police record

submits that premises may not have belonged to the present bail petitioner, but there is evidence that present bail petitioner and other persons, were

residing in the premises, from where contraband was recovered at Delhi. Present bail petitioner, who admittedly is a foreign national, is behind bars for

more than 2 years, whereas other co-accused Yunis Khan stands enlarged on bail. No doubt, petitioner is involved in the crime having adverse impact

on the society, but this court cannot lose sight of the fact that guilt, if any, of the bail petitioner is yet to be established on record in accordance with law.

In the case at hand, bail petitioner came to be named in the FIR on the basis of statement made by co-accused Sunil/Pankaj, and intermediate quantity

of heroin/chitta came to be recovered. Mere statement, if any, of co-accused is not sufficient to conclude the complicity of the petitioner in the case at

hand, especially when he after having received notice made himself available for investigation and nothing was recovered from the premises, where

the bail petitioner was allegedly residing at Delhi and as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite

period during trial, especially when he has suffered for more than two years. Evidence in the case is yet to commence and it would not be in the

interest of justice to curtail freedom of the bail petitioner during trial. Otherwise also, status report/record nowhere states that in past also, petitioner

had been indulging in illegal trade of the narcotics and as such, otherwise also, his prayer for grant of bail being first offender deserves to be

considered sympathically.

5. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence collected on

record by the Investigating Agency, but having taken note of aforesaid aspect of the matter, this Court sees no reason to let bail petitioner incarcerate

in jail for indefinite period, especially when other co-accused stand already enlarged on bail. Otherwise also, contraband allegedly recovered from the

bail petitioner is of intermediate quantity and as such, rigors of Section 37 of the Act are not attracted. It has been repeatedly held by Hon'ble

Apex Court as well as this Court in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law.

Since guilt, if any, of the bail petitioner is yet to be proved, in accordance with law, his prayer for grant of bail deserves consideration. Apprehension

expressed by learned Additional Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice or may again

indulge in such activities, can be best met by putting bail petitioner to stringent conditions. No material worth credence has been placed on record by

the Investigating Agency suggestive of the fact that in the event of petitioner's being enlarged on bail, he may again indulge in the illegal trade of

Narcotics.

6. Bail petitioner is behind bars since 11.8.2018, but charges are yet to be framed and accused cannot be kept behind bars for indefinite period pending

trial. Delay in criminal trial has been held to be in violation of right guaranteed to the accused under Section 21 of the Constitution of India. In this

regard, reliance is placed on judgment passed by the Hon'ble Apex Court in case titled Umarmia Alias Mamumia v. State of Gujarat, (2017) 2

SCC 731, relevant para whereof has been reproduced herein below:-

"11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in

violation of the right guaranteed to an accused under Article 21 of the Constitution of India. (See: Supreme Court Legal Aid Committee v.

Union of India, (1994) 6 SCC 731; Shaheen Welfare Assn. v. Union of India, (1996) 2 SCC 616) Accused, even in cases under TADA, have

been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the

trial at the earliest. (See: Paramjit Singh v. State (NCT of Delhi), (1999) 9 SCC 252 and Babba v. State of Maharashtra, (2005) 11 SCC

569).

7. 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, bail is not to be

withheld as a punishment. 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.

8. 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.”

9. In Manoranjana Singh Alias Gupta versus CBI 2017 (5) SCC 218, The Hon'ble Apex Court has 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.Ã¢â€

10. The HonÃ¢â€ble Apex Court in Prasanta Kumar Sarkar v. 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;

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

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

11. Recently, the HonÃ¢â€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 a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is

believed to be innocent until found guilty. HonÃ¢â€ble Apex Court further held that while considering prayer for grant of bail, 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. HonÃ¢â€ble Apex Court further held that if an accused is not hiding from the investigating

officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an

appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

Ã¢â€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.

12. 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 bond in the

sum of Rs. 1,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, 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.

(e) He shall handover passport, if any, to the Investigating Agency.

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 application alone. The petition stands accordingly disposed of.

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