

(2024) 02 SHI CK 0001

High Court Of Himachal Pradesh

Case No: Criminal Miscellaneous Petition (Main) No. 2965, 2966, 2967 Of 2023

Jitender Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 302, 304, 304(2), 323, 325

Hon'ble Judges: Rakesh Kainthla, J

Bench: Single Bench

Advocate: Ajay Kochhar, Anubhav Chopra, Varun Chauhan, Sumit Sharma

Final Decision: Allowed

Judgement

Rakesh Kainthla, J

1. Danish informed the Police Station Tissa on 10.8.2023 that 2-3 persons were quarrelling with his father due to which his father became

unconscious. The police visited the spot to verify the correctness of the information and found the dead body of Sukhdev-Danish's father.

Informant-Meenu told the police that on 10.8.2023, at around 10:30-10:45 am, she and her father were sitting in their house when Jitender came to the

house and asked Sukhdev (deceased) to come out of the house to discuss something. Sukhdev came out of the house. The informant followed her

father. Chain Lal, Jitender Kumar and his father Tek Chand were present near the lavatory. They inquired from Sukhdev as to why he had

constructed the stairs on their land. Sukhdev told them to discuss the matter and in case it was found out that stairs had been constructed on their land,

he would remove them. All of them got infuriated. Chain Lal pushed Sukhdev and he fell. Chain Lal, Jitender Kumar and Tek Chand gave beatings to

Sukhdev with kicks and fist blows. The informant shouted for help. Chain Lal pushed her. He told her that she was a kid and she should stay away.

Danish reached the spot and he tried to rescue his father Sukhdev but he was also beaten. Sukhdev became unconscious. Chain Lal threatened to kill

Sukhdev. People gathered on the spot and found that Sukhdev had died. The police registered the FIR and conducted the investigation. The Medical

Officer found a contusion on the right side of the face lateral to the eye. The police arrested petitioners Chain Lal, Jitender Kumar and Tek Chand. As

per the report of the Medical Officer, who conducted the postmortem examination, the cause of the death was acute coronary insufficiency, which

could have been caused due to a scuffle or sudden provocation when the person already had a heart problem. The police prepared the challan and

presented it before the Court.

2. The petitioners have filed the present petitions for seeking regular bail. It has been asserted that the petitioners are innocent and they were falsely

implicated. They have roots in the society and there is no apprehension of their absconding. They would abide by all the terms and conditions, which

may be imposed by the Court. Hence, it was prayed that the present petitions be allowed and petitioners be released on bail.

3. The State filed a status report reproducing the contents of the FIR and outlining various steps taken during the course of investigation.

4. I have heard Mr Ajay Kochhar, learned Senior Advocate assisted by Mr Anubhav Chopra and Mr Varun Chauhan, learned counsel for the

petitioners and Mr Sumit Sharma, learned Deputy Advocate General for the respondent-State.

5. Mr. Ajay Kochhar, learned Senior Advocate for the petitioners submitted that the petitioners are innocent and they were falsely implicated. There is

no evidence that the petitioners knew about the medical condition of the deceased in the absence of which they cannot be held liable for the

commission of an offence punishable under Section 302 of IPC. He has relied upon the judgments in Banta Singh Vs. State 1995 (0) RLW Rajasthan

157, Putti Ram Vs. State 1969 Cr.LJ 531, Ramrakh Vs. State 1999 Cr.LJ 3001, Mohinder Vs. NCT 2013 (4) JCC 2596 and Dhula Vs. State Cr.

Appeal No. 114 of 2019, decided on 21.1.2021 in support of his submissions.

6. Mr. Sumit Sharma, learned Deputy Advocate General for the respondent-State submitted that the petitioners gave beatings to the deceased who

died due to coronary insufficiency. They were involved in the commission of a heinous offence and should not be released on bail. Hence, he prayed

that the present petitions be dismissed.

7. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

8. The Honâ€™ble Supreme Court had discussed the parameters for granting the bail in Bhagwan Singh v. Dilip Kumar, 2023 SCC OnLine SC 1059

as under: -

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as

a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case.

There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail 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 granting bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a

prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be 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

have an order of bail.

13. We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav* (2004) 7 SCC 528 where

the parameters to be taken into consideration for the grant of bail by the Courts have been explained in the following words:

“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 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. (See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598: 2002 SCC (Cri)

688] and *Puran v. Rambilas* [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)”

9. A similar view was taken in *State of Haryana vs Dharamraj* 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in *Ram Govind Upadhyay v.*

Sudarshan Singh, (2002) 3 SCC 598 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*,

(2010) 14 SCC 496, the relevant principles were restated thus:

“9. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused.

However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic

principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in

mind while considering an application for bail are:

- (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.â€™

10. As per the status report, the deceased died due to acute coronary insufficiency, which could have been caused due to the scuffle or sudden

provocation under some situation like a person having a heart problem. This status report shows that the deceased would not have died but for the

heart problem suffered by him. There is nothing in the status report to show that the petitioners were aware of the fact that the deceased was

suffering from some heart problem. In Banta Singh (supra) and Ram Rakh (supra), the deceased died due to the beatings given to him leading to the

rupture of his enlarged spleen. It was held that in the absence of any evidence that the accused knew about the fact that the deceased was suffering

from an enlarged spleen, they cannot be held liable for the commission of an offence punishable under Section 302 or 304 of IPC but only for the

commission of an offence punishable under Section 323 of IPC. Similarly, in Putti Lal (supra), the deceased died due to the rupture of the heart on

account of his old age. There was no evidence that accused persons knew about the enlargement of the heart. It was held that the accused cannot be

held liable for the commission of an offence punishable under Section 302 of the IPC and he can only be held liable for the commission of an offence

punishable under Section 325 of IPC.

11. In Mohinder (supra), the deceased died due to shock consequent to cirrhosis of the liver as a result of physical assault. There was no evidence

that the accused knew that they were likely to cause death by infliction of the injuries. It was held that the accused cannot be held liable for the commission of an offence punishable under Section 304(2) of IPC but only for the commission of an offence punishable under Section 323 of IPC.

12. In Dhula Ram (supra) the person died due to cardiac arrest. No internal injuries were found and it was held that the case would be covered under Section 323 of IPC and not Section 304 of IPC.

13. In the present case, the status report shows that only a contusion on the right side of the face lateral to the eye was found. No internal injuries have been mentioned; therefore, prima facie, it is highly doubtful that the petitioners can be held liable for the commission of an offence punishable under Section 302 or 304(2) of IPC.

14. The petitioners have been in custody since 10.8.2023. Their bail applications have been opposed on the ground that the offence alleged against the petitioners is heinous which prima facie is not correct as found out above. No useful purpose would be served by detaining the petitioners in custody.

Consequently, the present petitions are allowed and the petitioners are ordered to be released on bail subject to their furnishing bail bonds in the sum of

₹50,000/- each with two sureties each to the like amount to the satisfaction of the learned Trial Court. While on bail, the petitioners will abide by the

following terms and conditions: -

(i) The petitioners will join the investigation as and when directed to do so by means of a written hukamnama.

(ii) The petitioners will not intimidate the witnesses nor will they influence any evidence in any manner whatsoever.

(iii) The petitioners shall attend the trial in case a charge sheet is presented against them and will not seek unnecessary adjournments.

(iv) The petitioners will not leave the present address(es) for a continuous period of seven days without furnishing the address of intending visit to the

SHO, the Police Station concerned and the Trial Court.

(v) The petitioners will furnish their mobile numbers, and social media contacts to the Police and the Court and will abide by the summons/notices

received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts,

the same will be intimated to the Police/Court within five days from the date of the change.

15. It is expressly made clear that in case of violation of any of these conditions, the prosecution will have the right to file a petition for cancellation of the bail.

16. The observation made herein before shall remain confined to the disposal of the petitions and will have no bearing, whatsoever, on the merits of the case.