
Ishant Kumar Vs State of Himachal Pradesh

CrMP(M) No. 734 of 2018

Court: High Court of Himachal Pradesh

Date of Decision: July 9, 2018

Acts Referred:

Code of Criminal Procedure, 1973 " Section 436, 436A, 439#Indian Penal Code, 1860 " Section 376, 506#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 " Section 3(1)(w)(i)#Constitution Of India " Article 21

Hon'ble Judges: SANDEEP SHARMA, J

Bench: Single Bench

Advocate: Vinay Sharma, S.C Sharma, Dinesh Thakur, Amit Kumar

Final Decision: Disposed of

Judgement

Sandeep Sharma, J.

1. By way of instant petition filed under Section 439 CrPC, bail petitioner prayed for grant of regular bail in respect of FIR No. 138/18 dated 7.6.2018

under Sections 376 and 506 IPC and Section 3(1)(w) (i) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989,

registered at Police Station, Sadar, District Chamba, Himachal Pradesh.

2. On 13.6.2018, bail petitioner surrendered before this Court and was taken into custody, however this court subsequently ordered him to be released

on bail, subject to his furnishing personal bonds in the sum of ` 25,000/- to the satisfaction of the learned Additional Registrar (Judicial).

3. Sequel to orders dated 13.6.2018 and 29.6.2018, ASI Subhash Kumar has come present with the record. Mr. Dinesh Thakur, learned Additional

Advocate General has also placed on record status report, prepared on the basis of investigation carried out by the investigating agency. Record

perused and returned.

4. Mr. Dinesh Thakur, learned Additional Advocate General, on instructions of the Investigating Officer, who is present in Court, fairly states that

pursuant to directions contained in orders dated 13.6.2018 and 29.6.2018, bail petitioner has joined the investigation and is fully cooperating.

5. Close scrutiny of record/status report reveals that FIR detailed herein above came to be lodged against bail petitioner at the behest of the

complainant-prosecutrix, who is 30 years old. She alleged that she was engaged with the bail petitioner, whereafter marriage was to be solemnized on

20.7.2018. Allegedly, after engagement, bail petitioner and complainant-prosecutrix started meeting each other and on 20.11.2017, bail petitioner took

complainant-prosecutrix to Hotel Ashiana Regency at Julahkhri, Chamba, where he sexually assaulted the complainant-prosecutrix against her wishes.

Allegedly, bail petitioner sexually assaulted the complainant-prosecutrix on various occasions against her wishes. However, on 4.6.2018, bail petitioner

refused to marry complainant-prosecutrix, as a consequence of which, FIR mentioned herein above came to be lodged against the bail petitioner.

6. Mr. Vinay Sharma, learned counsel representing the bail petitioner, while referring to the record/status report vehemently argued that it stands duly

proved on record that complainant-prosecutrix, who is thirty years old and had friendly relations with the bail petitioner and they have been meeting

each other for a quite considerable time. Mr. Sharma, further contended that as per own statement given by complainant-prosecutrix, she was never

compelled/forced by bail petitioner to have sexual relations with bail petitioner, rather, she after having developed intimate relations with the bail

petitioner, willfully joined the company of bail petitioner. Mr. Sharma, further submitted that it is true that bail petitioner had agreed for marriage but

since factum with regard to earlier marriage of complainant-prosecutrix with a person namely Munish came into his knowledge, he refused to marry

her and as such, no case, if any, is made out against the bail petitioner under Sections 376 and 506 IPC and Section 3(1)(w) (i) of the Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and he deserves to be enlarged on bail. Lastly, Mr. Sharma contended that

since bail petitioner has already joined investigation, no fruitful purpose would be served in case he is sent behind the bars because investigation is

almost complete and nothing is required to be recovered from him. Mr. Sharma, learned counsel representing the bail petitioner further contended that

since bail petitioner is a government employee, there is no likelihood of his fleeing from justice.

7. Mr. Dinesh Thakur, learned Additional Advocate General, while fairly acknowledging the fact that bail petitioner has joined the investigation and is

fully cooperating, opposed the prayer made on behalf of the bail petitioner, for grant of bail and contended that keeping in view the gravity of offence

allegedly committed by the bail petitioner, who is a policeman, he does not deserve to be enlarged on bail, rather, needs to be dealt with severely. Mr.

Thakur, further submitted that though in the investigation conducted pursuant to order passed by this Court on 29.6.2018, it has emerged that

complainant-prosecutrix is already married in the year 2015 to one Shri Munish, but that fact definitely does not give any licence to the bail petitioner

to sexually assault complainant-prosecutrix, against her wishes, as such, prayer made in the instant petition deserves to be rejected outrightly.

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

9. Having carefully perused the material available on record, it is quite apparent that bail petitioner and complainant-prosecutrix had been meeting each

other frequently after their engagement on 19.10.2017. It is also not in dispute that after alleged date of incident, i.e. 20.11.2017, complainant-

prosecutrix kept meeting bail petitioner till 4.6.2018, on which date, FIR detailed herein above came to be lodged against the bail petitioner.

10. As has been noticed herein above, complainant-prosecutrix is a mature lady and it is not understood, that in case on 20.11.2017, she was sexually

assaulted against her wishes, what prevented her from lodging report, if any, either with her parents, Gram Panchayat or police. In the case at hand,

she kept mum for almost nine months, whereafter FIR came to be lodged against bail petitioner. In the statement given to police, complainant-

prosecutrix narrated incident dated 20.11.2017, but allegedly that incident took place at Ashiana Regency, which is not a residential hotel, rather a

restaurant, as such, story put forth by complainant - prosecutrix does not appear to be probable. Apart from above, it has also come in the investigation

that complainant-prosecutrix is a married woman and as such, there appears to be some force in the argument of the learned counsel representing the

bail petitioner that since factum with regard to prior marriage of complainant-prosecutrix came into his notice, he refused to marry her.

11. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of evidence adduced on record by

the prosecution but this court taking note of the facts and circumstances narrated herein above coupled with the fact that bail petitioner has already

joined the investigation and is fully cooperating, sees no reason to allow prayer of investigating agency for custodial interrogation of the bail petitioner.

Bail petitioner is a government employee and as such, there is no likelihood of his fleeing from justice, rather, he shall be available for investigation and

trial, as and when required by the investigating agency. Moreover, this court can not lose sight of the fact that guilt, if any, of the bail petitioner is yet

to be proved in accordance with law, as such, it may not be just and fair to curtail his freedom for indefinite period. By now, it is settled law that

freedom of an individual is of utmost importance and same can not be curtailed for indefinite period, especially when guilt is yet to be proved.

12. 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. The Hon'ble Apex Court has held as under:

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 inserting Section Procedure, 1973. been taken by Parliament by 436A in the Code of Criminal.

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*.

13. 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 object of bail is neither punitive nor preventative. The Hon'ble Apex Court in Sanjay

Chandra versus Central Bureau of Investigation (2012)1 Supreme Court Cases 49; has been 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.

14. 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.

15. 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;

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

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

16. In view of above, bail petitioner has carved out a case for grant of bail and as such, present petition is allowed. Order dated 13.6.2018 is made

absolute subject to petitioner furnishing fresh bail bonds in the sum of Rs.1,00,000/- (Rs. One Lakh) with one local surety in the like amount, to the

satisfaction of the Investigating Officer, besides the 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 surrender passport, if any, held by her.

17. 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.

18. 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.