

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 40 of 2018

Date of Decision No.22.01.2018

Devya Dhingra Petitioner

Versus

State of Himachal PradeshRespondent.

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹ Yes.

For the petitioner: Mr. Anup Chitkara, Advocate.

For the respondent: Mr. Rajat Chauhan, Law Officer.

Sandeep Sharma, Judge (oral):

Bail petitioner, namely Devya Dhingra, who is in custody since 22.09.2017, has approached this Court for grant of regular bail under Section 439 of the Code of Criminal Procedure in case FIR No.119 of 2016, dated 13.09.2016, under Sections 420, 306, 419, 467, 468 & 471 of the Indian Penal Code registered at Police Station, Bhoranj, District Hamirpur, Himachal Pradesh.

2. Sequel to order dated 15.1.2018, SI Bhagat Ram, Police Station, Bhoranj, has come present in Court alongwith the record of the case. Mr. Rajat Chauhan, learned Law Officer, has also placed on record status report prepared on the basis of the investigation carried out by the investigating agency. Record perused and returned.

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

3. Perusal of the record/status report, suggests that FIR, detailed hereinabove, came to be lodged at police Station, Bhoranj at the behest of complainant namely Smt. Kashmiro Devi wife of late Sh. Amarjeet Sharma, who alleged that her husband, who was an employee of "Pandhar Co-operative society" committed suicide on account of cheating/fraud committed/played upon him by various persons including the present bail petitioner. After having received the intimation with regard to alleged suicide committed by the husband of the complainant, police also recovered one suicide note, wherein details with regard to various accounts numbers were mentioned. Since, status report/record further reveals that when on 19th June, 2016 Pandhar Co-Operative society were audited, it transpired that two companies i.e. "Reliance Communication, New Delhi" and "Union Value Service, Gajiabad", fraudulently obtained Rs. 60 lakhs from the bail petitioner and that ultimately became cause of his death.

4. Record/status report further reveals that deceased Amarjeet Sharma had deposited an amount of Rs. 2,00,000/- on 20th July, 2015 in the account of the firm namely "M/s Real Enterprises" Indian Overseas Bank, Meerut. The money deposited in the aforesaid account, was immediately withdrawn through a self cheque. In the investigation, it also emerged that deceased Amarjeet Sharma merely on the basis of certain phone calls, kept on depositing certain amount in various companies, especially two

companies, named hereinabove, that too after embezzling the amount from Pandhar Co-Operative Society. Since, the present bail petitioner was a sleeping partner in the firm namely M/s Real Enterprises, she also came under scanner and ultimately was arrested on 22.9.2017.

5. Mr. Anup Chitkara, learned counsel representing the bail petitioner, while referring to the record/status report, vehemently argued that no case, if any, under the aforesaid provisions of law is made out against the bail petitioner, who at no point of time was in contact with the deceased Amarjeet Sharma. Learned counsel for the petitioner further contended that bare perusal of the details placed on record by the Investigating Agency, itself suggest that deceased Amarjeet Sharma had been depositing amount belonging to Co-operative Society in various accounts without there being any proper authorization from the Pandhar Co-operative society and as such, it cannot be said that deceased Amarjeet Sharma was defrauded or was forcibly made to deposit amount in various accounts, as finds mentioned in the status report. Learned counsel further contended that though there is no direct connection, if any, of bail petitioner with the amount allegedly deposited by the deceased Amarjeet Sharma in the account of Real Enterprises, but even otherwise an amount of Rs. 2,00,000/- allegedly deposited by the deceased Amarjeet Sharma, has been recovered and as such, at the present juncture, nothing

is required to be recovered from the bail petitioner. Lastly, learned counsel representing the bail petitioner, contended that bail petitioner is a lady and has been falsely implicated in the case for no fault of her and as such, she deserves to be enlarged on bail. Learned counsel further submitted that though bail petitioner shall be always available for investigation/trial, but with a view to meet the apprehension, if any, of respondent/State, she can be put to stringent conditions, so that her presence is secured during the trial of the case.

6. Mr. Rajat Chauhan, learned Law Officer, while acknowledging that investigation qua the bail petitioner is complete and nothing is required to be recovered from her, opposed the aforesaid prayer for grant of bail, having been made by the learned counsel for the petitioner. Learned counsel also contended that keeping in view the alleged offences committed by the bail petitioner, she does not deserve any leniency, rather needs to be dealt with severely. Mr. Chauhan, learned law Officer, admitted on the instructions of Investigating Officer, who is present in Court that an amount of Rs. 2,00,000/- allegedly deposited by the deceased Amarjeet Sharma in the firm M/s Real Enterprises stands recovered and at this stage, nothing is required to be recovered from the bail petitioner. Lastly, learned Law Officer, stated that in case this Court intends to enlarge the bail

petitioner on bail, she may be put to stringent conditions, so that her presence is secured during the trial.

7. I have heard learned counsel representing the parties and carefully gone through the record made available.

8. After having carefully perused the status report/record, this Court is persuaded to agree with the contention of Mr. Anup Chitkara, learned counsel representing the bail petitioner that there appears to be no direct connection, if any, of bail petitioner with the transactions, if any, made on her behalf with the deceased Amarjeet Sharma. It is quite apparent/evident from the record/status report that deceased Amarjeet Sharma merely on telephonic calls/assurances given by the persons, who ultimately defrauded him, made huge investment that too without having obtained any authority on behalf of the society and as such, it is difficult to conclude/believe that he committed suicide on account of instigation/abatement, if any, allegedly made by the bail petitioner.

9. Leaving everything aside, amount allegedly received by the company, in which the bail petitioner was a sleeping partner stands recovered and as such, no fruitful purpose would be served by keeping the bail petitioner in custody. Otherwise also, guilt, if any, of bail petitioner is yet to be proved, in accordance with law, by the prosecution by leading cogent and convincing evidence and as such, freedom of bail petitioner cannot be allowed to be

curtailed for indefinite period during the trial, especially when she has suffered for more 4 months. Though, no material has been placed on record by the Investigating Agency suggestive of the fact that in the event of petitioner's is enlarged on bail, she may flee from justice, but with a view to meet apprehension expressed by law officer, bail petitioner can be put to stringent conditions, so that she makes herself available for investigation during the trial.

10. By now it is well settled that gravity alone cannot be 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; wherein it 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 propose of giving him a taste of imprisonment as a lesson."

11. 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.

12. Law with regard to grant of bail is now well settled. The apex Court in **Siddharam Satlingappa Mhetre versus State of Maharashtra and others**, (2011) 1 SCC 694, while relying upon its decision rendered by its Constitution Bench in

Gurbaksh Singh Sibbia vs. State of Punjab, (1980) 2 SCC 565, laid down the following parameters for grant of bail:-

“111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in 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 an order of bail.”

(Emphasis supplied)

13. In **Sundeep Kumar Bafna versus State of Maharashtra & another** (2014)¹⁶ Supreme Court Cases 623, wherein it has been held as under:-

“8. Some poignant particulars of Section 437 CrPC may be pinpointed. First, whilst Section 497(1) of the old Code alluded to an accused being “brought before a Court”, the present provision postulates the accused being “brought before a Court other than the High Court or a Court of Session” in respect of the commission of any non-bailable offence. As observed in Gurcharan Singh vs State (Delhi Admn) (1978) 1 SCC 118, there is no provision in the CrPC dealing with the production of an accused before the Court of Session or the High Court. But it must also be immediately noted that no provision categorically prohibits the production of an accused before either of these Courts. The Legislature could have easily enunciated, by use of exclusionary or exclusive terminology, that the superior Courts of Sessions and High Court are bereft of this jurisdiction or if they were so empowered under the Old Code now stood denuded thereof. Our understanding is in conformity with Gurcharan Singh, as perforce it must. The scheme of the CrPC plainly provides that bail will not be extended to a person accused of the commission of a non-bailable offence punishable with death or imprisonment for life, unless it is apparent to such a Court that it is incredible or beyond the realm of reasonable doubt that the accused is guilty. The enquiry of the Magistrate placed in this position would be akin to what is envisaged in State of Haryana vs Bhajan Lal, 1992 (Supp)1 SCC 335, that is, the alleged complicity of the accused should, on the factual matrix then presented or prevailing, lead to the overwhelming, incontrovertible and clear conclusion of his innocence. CrPC severely curtails the powers of the Magistrate while leaving that of the Court of Session and the High Court untouched and unfettered. It appears to us that this is the only logical conclusion that can be arrived at on a conjoint consideration of Sections 437 and 439 of the CrPC. Obviously, in order to complete the picture so far as concerns the powers and limitations thereto of the Court of Session and the High Court, Section 439 would have to be carefully considered. And when this is done, it will at once be evident that the CrPC has placed an embargo against granting relief to an accused, (couched by us in the negative), if he is not in custody. It seems to us that any persisting ambivalence or doubt stands dispelled by the proviso to this Section, which mandates only that the Public Prosecutor should be put on notice. We have not found any provision in the CrPC or elsewhere, nor have any been brought to our ken, curtailing the power of either of the superior Courts to entertain and decide pleas for bail.

Furthermore, it is incongruent that in the face of the Magistrate being virtually disempowered to grant bail in the event of detention or arrest without warrant of any person accused of or suspected of the commission of any non-bailable offence punishable by death or imprisonment for life, no Court is enabled to extend him succour. Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law maxim, viz. 'where there is a right there is a remedy'. The universal right of personal liberty emblazoned by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to this pandect comprising Sections 437 to 439, and, therefore, predicates on the well established principles of interpretation of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Some salient features of these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Session Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word 'custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conundrum of 'Committal of cases to the Court of Session' because of a possible hiatus created by the CrPC."

14. In **Manoranjana Sinh 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 nor 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 and 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.”

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;**
- (viii) **reasonable apprehension of the witnesses being influenced; and**
- (ix) **danger, of course, of justice being thwarted by grant of bail.**

16. 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 bonds in the sum of Rs 1,00,000/- with one local surety in the like amount to the satisfaction of concerned Judicial Magistrate, with following conditions:

- (a) She shall make herself 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) She shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) She 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) She shall not leave the territory of India without the prior permission of the Court.

17. It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon her, 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 application alone.

The petition stands accordingly disposed of.

Copy **dasti**.

**(Sandeep Sharma),
Vacation Judge**

22nd January, 2018
(shankar)