

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 46 of 2018

Date of Decision No.22.01.2018

Surender Kalta Petitioner

Versus

State of Himachal PradeshRespondent.

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? ¹

For the petitioner: Mr. Lakshay Thakur, Advocate.

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

Sandeep Sharma, Judge (oral):

By way of instant petition filed under Section 439 Cr. P.C, a prayer has been made on behalf of the bail petitioner for grant of bail in case FIR No. 29 of 2017, dated 4.12.2017 under Sections 420 & 506 of the Indian Penal Code and Section 3(1) (r) of Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act, 1989, registered at Police Station, Kaza, District Lahaul Spiti, Himachal Pradesh.

2. Sequel to order dated 15.01.2018, Dy. SP, Mukesh Kumar, Police Station, Kaza, District Lahaul Spiti, has come present in Court alongwith the record of the case. Mr. Rajat Chauhan, learned Law Officer, has also placed on record status

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

report prepared on the basis of the investigation carried out by the Investigating Agency.

3. Mr. Rajat Chauhan, learned Law Officer, on instructions of Investigating Officer, who is present in Court, states that pursuant to order dated 15.01.2018, petitioner has joined the investigation and at this stage, nothing is required to be recovered from the bail petitioner. Mr. Chauhan, learned Law Officer, on instructions fairly stated that at this stage, there is no requirement of custodial interrogation of the bail petitioner, but necessary direction may be issued to the bail petitioner to join the investigation as and when called by the Investigating Agency.

4. In view of the aforesaid fair submissions having been made by Mr. Chauhan, learned Law Officer, that petitioner has joined the investigation in terms of aforesaid order passed by this Court and nothing is required to be recovered from him at this stage, this Court sees no reason for custodial interrogation of the bail petitioner and as such, he deserve to be enlarged on bail.

5. 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.

6. 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 propose of giving him a taste of imprisonment as a lesson.”

7. 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 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.”

8. The Hon’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.***

9. 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).

10. Consequently, in view of the above, order dated 15.1.2018 passed by this Court, is made absolute, subject to 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 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.

11. It is clarified that if the petitioner misuses his 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.

12. 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 bail petition stands disposed of accordingly.

Copy **dasti**.

**(Sandeep Sharma),
Vacation Judge.**

22nd January, 2018
(shankar)