

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P.(M) No.473 of 2018.

Date of decision : 27.04.2018.

Kulbhushan**Petitioner.**

Versus

State of Himachal Pradesh**Respondent.**

Coram

The Hon’ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? No

For the Petitioner : Mr. N. S. Chandel, Advocate.

**For the Respondent : Mr. Vinod Thakur and Mr. Sudhir
Bhatnagar, Addl. A.Gs., with
Mr.J.S.Guleria, Dy.A.G.**

Tarlok Singh Chauhan, Judge (Oral).

The petitioner has sought regular bail under Section 439 of the Code of Criminal Procedure in case FIR No.153 of 2011 dated 5.11.2011, registered at Police Station, Jogindernagar, District Mandi, H.P. under Sections 452, 147, 148, 149, 302 and 506 IPC.

2. It is not in dispute that out of the same incident, even the petitioner and his other co-accused have also lodged FIR on the same date being FIR No. 154 of 2011, which too, has been registered at Police Station, Jogindernagar, District Mandi, under Sections 341, 323, 302 and 34 IPC.

3. It is also not in dispute that all the accused in FIR No. 154 of 2011 have already been ordered to be released on bail, whereas it is the petitioner herein, who has not been released on bail only on the

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ? Yes*

ground that he is charged with the serious offence and the matter is pending trial.

4. It is yet not in dispute that the petitioner is languishing in jail for the last more than six years, whereas the accused in the FIR lodged by the petitioner, as observed earlier, have already been granted bail.

5. Law must be administered even handedly, more particularly, when the offences with which the respective parties have been charged appear to be common and the lead thereof being punishable offence under Section 302 IPC i.e. murder.

6. As regards the trial against the petitioner, the same has virtually concluded but even then no decision in the said case can be rendered because the evidence in the counter case being FIR No. 154 of 2011 is yet in midway and is not likely to conclude shortly.

7. As observed earlier, the petitioner has been languishing in jail for the last more than six years despite his status being only that of an accused and not that of a convict. Therefore, in such circumstances, petitioner cannot be made to languish indefinitely in custody.

8. The Hon'ble Supreme Court in ***Sanjay Chandra vs. Central Bureau of Investigation, JT 2012 (13) SC 530*** has clearly 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. The Hon'ble Supreme 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 a 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 that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. The detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 12 of the Constitution.

9. Recently the Hon'ble Supreme Court in ***Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22*** has held that freedom of an individual cannot be curtailed for indefinite period especially when his guilt has yet not been proved. It is further held that a person is believed to be innocent until found guilty. It shall be apposite to reproduce the relevant observations as contained in paras 2 to 5 of the judgment, which read thus:

“2. 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.

3. 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.

4. 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 *Inhuman Conditions in 1382 Prisons* (2017) 10 SCC 658.*

5. *The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v. Union of India* (2018) 11 SCC 1 going back to the days of the Magna Carta. In that decision, reference was made to *Gurbaksh Singh Sibbia v. State of Punjab* (1980) 2 SCC 565 in which it is observed that it was held way back in *Nagendra Nath Chakravarti v. King-Emperor* (1923) SCC Cal 318 that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. H.L. Hutchinson* (1931) SCC All 14 wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.”*

10. However, it was also clarified that Court should not be understood to mean that bail should be granted in every case as this was a matter entirely within the discretion of a Judge, but nonetheless the discretion should be exercised judiciously and in a humane manner and compassionately.

11. While opposing the bail application, learned Additional Advocate General has vehemently argued that the charges against the petitioner are extremely serious and, therefore, he should not be granted bail. But what appears to have been forgotten and side-tracked by the State is the fact that in the counter case instituted at the

instance of the petitioner being FIR No. 154 of 2011, all the accused therein have already been granted bail.

12. Apart from that, it is by now 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 Supreme 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.

13. In view of the above, the present bail petition is allowed and the petitioner is ordered to be released on bail in case FIR No.153 of 2011 dated 5.11.2011, registered at Police Station, Jogindernagar, District Mandi, H.P. under Sections 452, 147, 148, 149, 302 and 506 IPC, on following terms and conditions:

- (i) that the petitioner shall furnish bail bonds in the sum of ₹ 1,00,000/- with one local surety of the like amount to the satisfaction of the Chief Judicial Magistrate, Mandi, District Mandi, H.P.;
- (ii) that the petitioner shall surrender his passport with the Investigating Agency.
- (iii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer;
- (iv) that the petitioner shall not tamper with the prosecution evidence or threaten the witnesses.

- (v) that the petitioner shall not leave the country without prior permission of the Court;
- (vi) that the petitioner shall not misuse his liberty in any manner.

Learned Chief Judicial Magistrate, Mandi, District Mandi, H.P. is directed to comply with the directions issued by the High Court, vide communication No. HHC.VIG/ Misc. Instructions/93-IV. 7139 dated 18.3.2013.

14. Any observation made hereinabove shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

Petition stands disposed of.

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27th April, 2018.
(krt)

(Tarlok Singh Chauhan)
Judge