

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA**

**Cr.MP(M) Nos. 2282, 2283 & 2284 of 2020  
Date of Decision: December 31, 2020**

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|---------------------|------------------------------------|-----------------------|
| <b>1.</b>           | <b>Cr. MP(M) No. 2282 of 2020.</b> |                       |
| <b>Manoj Kumar</b>  |                                    | <b>...Petitioner.</b> |
| <b>Versus</b>       |                                    |                       |
|                     | <b>State of Himachal Pradesh</b>   | <b>...Respondent.</b> |
|                     |                                    |                       |
| <b>2.</b>           | <b>Cr. MP(M) No. 2283 of 2020.</b> |                       |
| <b>Dinesh Kumar</b> |                                    | <b>...Petitioner.</b> |
| <b>Versus</b>       |                                    |                       |
|                     | <b>State of Himachal Pradesh</b>   | <b>...Respondent.</b> |
|                     |                                    |                       |
| <b>3.</b>           | <b>Cr. MP(M) No. 2284 of 2020.</b> |                       |
| <b>Meena Devi</b>   |                                    | <b>...Petitioner.</b> |
| <b>Versus</b>       |                                    |                       |
|                     | <b>State of Himachal Pradesh</b>   | <b>...Respondent.</b> |
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*Coram:*

**The Hon'ble Mr. Justice Anoop Chitkara, Judge.**

*Whether approved for reporting?*<sup>1</sup> **NO.**

For the petitioner: Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate.

For the respondent: Mr. S.C. Sharma & Nand Lal Thakur, Additional Advocate General with Mr. Ram Lal Thakur, Assistant A.G.

**COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE**

**Anoop Chitkara, Judge.**

The petitioners apprehending imminent arrest on being arraigned as accused have come up under Section 438 CrPC, seeking anticipatory bail.

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<sup>1</sup> **Whether reporters of Local Papers may be allowed to see the judgment?**

2. Based on the complaint of Shubham Thakur, the police registered FIR No.99 of 2020, dated 27.12.2020, under Section 452, 323, 325, 326, 341, 506 read with Section 34 of Indian Penal Code, 1860, (IPC), in Police Station, Kasauli, District Solan, Himachal Pradesh, disclosing cognizable and non-bailable offences.

3. The status report reveals that the petitioners have no criminal history relating to the offences prescribing sentence of greater than seven years of imprisonment or when on conviction, the sentence imposed was more than three years.

4. Briefly, the allegations against the petitioners are that on 26.12.2020, at around 7.00 p.m., when the complainant was in the house of his Uncle (Tuaji), he heard the cries from his house. After that he rushed towards his house and saw the accused-petitioners in the courtyard with 'Danda' and 'Darat' in their hands. After that on seeing the complainant, the accused-petitioners fled away from the spot, however, before that they have badly injured the father and uncle of the complainant. After that when the injured were being shifted to the Hospital, the accused-petitioners have parked their JCB Machines in the middle of the road and blocked it. After that both the injured were taken to ESI Hospital Parwanoo in 108 Ambulance, from where they were referred to the Government Hospital, Solan. After that, for further treatment, they both were referred to MMU Sultanpur.

5. The Counsel for the petitioners seeks bail and submitted that on the complaint of the accused cross FIRs have been registered.

6. The contention on behalf of the State is that if this Court grants bail, such order must be subject to conditions, especially of not repeating the criminal activities.

#### **ANALYSIS AND REASONING:**

7. In **Gurbaksh Singh Sibbia and others v. State of Punjab**, 1980 (2) SCC 565, (Para 30), a Constitutional bench of Supreme

Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him, or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In **State of Rajasthan, Jaipur v. Balchand**, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In **Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh**, (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours release unless countered by the negative criteria necessitating that course. In **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the

grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

8. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

9. On the complaint of the accused-petitioners, cross FIR No.98 stands registered. Mr. Sudhir Thakur, learned Senior Advocate assisted by Mr. Karun Negi, Advocate states that the complainant party were the aggressors. On the other hand, Mr. Ram Lal Thakur, learned Additional Advocate General submits that it was the accused-petitioners, who were aggressors. This is a disputed question, which will be dealt with at the time of trial, however, keeping in view the penal provisions involved and the nature of the allegations, there is not justification for custodial or pre-trial incarceration.

10. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate conditions and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

11. Given the above reasoning, the Court is granting bail to the petitioners, subject to the imposition of following stringent conditions, which shall be over and above, and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC. Consequently, the present petitions are allowed, and in the event of arrest the petitioners shall be released on bail in the FIR mentioned above, on their furnishing personal bonds of INR 5,000/- each, (INR five thousand only), with one surety each in the like amount to the satisfaction of the Investigator/SHO of the concerned Police Station. The furnishing of bail bonds shall be deemed acceptance of all stipulations, terms, and conditions of this bail order:

- a) The Attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioners along with the phone number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).
- b) The petitioners shall join investigation as and when called by the Investigating officer or any superior officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioners shall not be called before 8 AM and shall be let off before 5 PM. The petitioners shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.
- c) The petitioners shall join and cooperate in the investigation, and failure to do so shall entitle the prosecution to seek cancellation of the anticipatory bail granted by the present order. (Kala Ram v. State of Punjab, 2018 (11) SCC 350).
- d) The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from

disclosing such facts to the Police, or the Court, or to tamper with the evidence.

e) Once the trial begins, the petitioners shall not, in any manner, try to delay the trial. The petitioners undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioners shall attend the trial on each date, unless exempted.

f) There shall be a presumption of proper service to the petitioners about the date of hearing in the concerned Court, even if it takes place through SMS/ WhatsApp message/ E-Mail/ or any other similar medium, by the Court.

g) In the first instance, the Court shall issue summons and may inform the Petitioners about such summons through SMS/ WhatsApp message/ E-Mail.

h) In case the petitioners fail to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioners about such Bailable warrants through SMS/ WhatsApp message/ E-Mail.

i) Finally, if the petitioners still fail to put in an appearance, then the concerned Court may issue Non-Bailable warrants to procure the petitioners' presence and send the petitioners to the Judicial custody for a period for which the concerned Court may deem fit and proper.

j) In case of Non-appearance, then irrespective of the contents of the bail bonds, the petitioners undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioners' failure to

reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioners. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioners and it relates to the exercise undertaken solely to arrest the petitioners in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

k) The petitioners shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within thirty days from such modification, to the police station of this FIR, and the concerned Court, if such stage arises.

l) **The petitioners shall neither stare, stalk, make any gestures, remarks, call, contact, message the complainant, either physically, or through phone call or any other social media, nor roam around the complainant's home. The petitioners shall not contact the complainant.**

m) The petitioners shall abstain from all criminal activities. If done, then while considering bail in the fresh FIR, the Court shall take into account that even earlier, the Court had cautioned the accused not to do so.

n) During the trial's pendency, if the petitioners repeat the offence or commit any offence where the sentence prescribed is seven years or more, then the State may move an appropriate application for cancellation of this bail.

o) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioners. Otherwise, the bail bonds shall continue to remain in force throughout the trial following the mandate of the Constitutional Bench in **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, wherein the

Constitutional bench held that anticipatory bail can continue until the end of the trial; however, the Courts can limit the bail period's tenure if unique or peculiar features require.

13. The learned Counsel representing the accused and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order to the petitioners, in vernacular and if not feasible, in Hindi or English.
14. In case the petitioners find the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioners may file a reasoned application before this Court, and after taking cognizance, even before the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.
15. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation, in accordance with law.
16. The present bail order is only for the FIR mentioned above. It shall not be a blanket order of bail in any other case(s) registered against the petitioners.
17. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.
18. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

The petition stands allowed in the terms mentioned above.

*Copy Dasti.*

**December 31, 2020 (ps)**

**(Anoop Chitkara),  
Judge.**