

THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 29TH DAY OF JULY 2022

BEFORE

HON'BLE MR. JUSTICE SANDEEP SHARMA

CRIMINAL MISC. PETITION(MAIN) NO. 1565 OF 2022

Between:-

SH. SHAHID KHAN
S/O SH. BUNDU KHAN,
RESIDENT OF H. NO. 133/I,
MOH. DHABON, NAHAN, DISTRICT SIRMAUR, H.P.
AGED YEARS

PETITIONER

(BY MR. IMRAN KHAN, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH

RESPONDENT

(BY MR. SUDHIR BHATNAGAR AND
MR. NARINDER GULERIA,
ADDITIONAL ADVOCATES GENERAL
WITH MR. SUNNY DHATWALIA,
ASSISTANT ADVOCATE GENERAL)

HC HARISH NO. 44, POLICE STATION WEST, SHIMLA

Whether approved for reporting:

This petition coming on for orders this day, the court passed the following:

ORDER

By way of instant petition filed under S.438 CrPC, bail petitioner has approached this court for grant of anticipatory bail in case FIR No. 162, dated 29.6.2022, under Ss. 279, 323, 504, 506 and 34 IPC and S. 187 of the Motor Vehicles Act registered with Police Station Boileauganj (West), District Shimla, Himachal Pradesh.

2. Respondent-State has filed status report. Investigating Officer, has come present with record. Record perused and returned.

3. Learned Additional Advocate General, while fairly admitting that the bail petitioner has joined the investigation and nothing remains to be recovered from the bail petitioner, states that keeping in view the gravity of the offence alleged to have been committed by the bail petitioner, he does not deserve any leniency, but in case this court intends to enlarge him on bail, stringent conditions may be imposed upon him.

4. Hon'ble Apex Court and this Court in a catena of cases have repeatedly held that one is deemed to be innocent, till the time, he/she is proved guilty in accordance with law. In the case at hand, complicity, if any, of the bail petitioner is yet to be established on record by the investigating agency, as such, this Court sees no reason to let the bail petitioner incarcerate in jail for an indefinite period during trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Additional Advocate General, that in the event of being enlarged on bail, bail petitioner may flee from justice or indulge in such offences again, can be best met by putting the bail petitioner to stringent conditions.

5. 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 been further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty.

6. Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation** (2012)1 Supreme Court Cases 49 has held 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.

7. In **Manoranjana Sinh alias Gupta** versus **CBI**, (2017) 5 SCC 218, Hon'ble Apex Court has held that the 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.

8. The Apex Court in **Prasanta Kumar Sarkar** versus **Ashis Chatterjee and another** (2010) 14 SCC 496, has laid down various principles to be kept in mind, while deciding petition for bail viz. prima facie case, nature and gravity of accusation, punishment involved, apprehension of repetition of offence and witnesses being influenced.

9. In view of above, bail petitioner has carved out a case for himself, as such, present petition is allowed. Order dated 14.7.2022 is made absolute subject to bail petitioner's furnishing fresh bail bonds in the

sum of Rs.20,000/- 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.

10. 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.

11. 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.

Copy dasti.

**(Sandeep Sharma),
Judge**

July 29, 2022
(vikrant)