

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr. MPs(M) No. 1333,
1334 & 1335 of 2023
Reserved: 22.06.2023
Decided on: 30.06.2023**

(1) Cr. MP(M) No. 1333 of 2023

Diwan ChandPetitioner

Versus

State of Himachal Pradesh ...Respondent

(2) Cr. MP(M) No. 1334 of 2023

Bimla DeviPetitioner

Versus

State of Himachal Pradesh ...Respondent

(3) Cr. MP(M) No. 1335 of 2023

Neeraj KumarPetitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?¹

For the petitioner(s) : Mr. Nand Lal Thakur, Advocate.

For the respondent : Mr. Raj Kumar Negi, Addl. AG.

Sushil Kukreja, Judge

¹ Whether reporters of Local Papers may be allowed to see the judgment?

Since all these petitions arise out of a common FIR, they are heard together and are being disposed of by this common order.

2. By way of instant petitions, filed under Section 439 of the Criminal Procedure Code, the petitioners are seeking bail in case FIR No. 111/2023, dated 06.05.2023, registered at Police Station Sadar, District Mandi, H.P., under Sections 341, 323, 324, 325, 307, 504, 506 and 34 of the Indian Penal Code (hereinafter referred to as "IPC").

3. The prosecution story, in brief, is that on 06.05.2023, complainant Amrit Lal got his statement recorded before the police that on 06.05.2023 at about 8:25 a.m., while he alongwith his wife had gone to fetch grass from their fields, then Diwan Chand, his wife Bimla Devi and son Neeraj Kumar (petitioners herein) came there and started abusing them and also threatened them with dire consequences. Thereafter, Diwan Chand and his son Neeraj Kumar, who were carrying *danda* with them and his wife, who was

carrying *darati* with her, hit his wife, due to which, she sustained injuries on her arm and her body. On hearing hue and cries, his son-in-law Mahender Singh came to the spot and rescued them from the clutches of the petitioners. Consequently, FIR as detailed hereinabove, came to be registered against the petitioners and they were arrested.

4. The bail applications have been filed on the ground that the petitioners are innocent and have been falsely implicated in the present case. The learned counsel for the petitioners submitted that the petitioners are behind the bars since their arrest and no fruitful purpose will be served by keeping them behind the bars for an unlimited period, as the investigation is complete and trial may take sufficiently long time to conclude.

5. Conversely, the learned Deputy Advocate General has submitted that the petitioners do not deserve to be released on bail as they have been found involved in a serious offence, so at this stage, in case

they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice.

6. I have given my considered thought to the rival contentions raised and also gone through the police file as well as the status report filed by the prosecution. The perusal of the record reveals that the investigation in the case is complete and the petitioners are presently lodged in the judicial custody. In ***Sanjay Chandra Vs. Central Bureau of Investigation***, (2012) 1 Supreme Court Cases 49, it has been held that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail and that every man is deemed to be innocent until duly tried and duly found guilty. Relevant portion of the aforesaid judgment reads as under:-

“21. In bail applications, generally, it has been laid down from the earliest times that 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.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted 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 this country, 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.

23. Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

7. In ***Manoranjana Sinh alias Gupta Vs. CBI***, (2017) 5 SCC 218, the Hon'ble Apex Court reiterated the

decision rendered in ***Sanjay Chandra's*** case (supra) by holding as under:-

“16. This Court in Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40, 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 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. 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. Similar reiteration of law can be found in ***Dataram Singh Vs. State of Uttar Pradesh & Another***, (2018) 3 SCC 22, wherein it has been held that a person is believed to be innocent until found guilty and the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home is an exception. Relevant portion of the aforesaid judgment reads as under:-

“1. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

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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 In Re-Inhuman Conditions in 1382 Prisons."

9. In the instant case, as observed earlier, the investigation in the case is complete and the petitioners are lodged in the judicial custody. As per the status report, the final opinion given by the Medical Officer with respect to the injuries caused to the injured is vague as it has been opined by the doctor that "the injury caused may or may have been fatal". The chargesheet in the case is yet to be filed and the trial is still to commence, which may take sufficiently long time to conclude. Moreover, the complicity, if any, of the petitioners is yet to be established on record, as such, no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period. The

prosecution has failed to produce any material on record to suggest that the petitioners will tamper with the prosecution evidence, if enlarged on bail. There is also nothing on record to suggest that they will abscond and flee from justice, if enlarged on bail, as they are the permanent residents of District Mandi.

10. Hence, after going through the material available on record and considering the overall facts and circumstances of the case, this Court finds that the present is a fit case where judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, all the bail applications are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 111/2023, dated 06.05.2023, registered at Police Station Sadar, District Mandi, H.P., under Sections 341, 323, 324, 325, 307, 504, 506 and 34 of IPC, shall be forthwith released on bail, subject to their furnishing personal bond to the tune of Rs. 50,000/- (Rupees fifty thousand) each, with one surety in the like amount each, to the satisfaction of

learned Trial Court. This bail order is subject, however, to the following conditions:-

- (i) *that the petitioners will appear before the Court and the Investigating Officer whenever required ;*
- (ii) *that they will 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 any facts to the Court or the police;*
- (iii) *that they will not tamper with the prosecution evidence nor he will try to win over the Prosecution witnesses or terrorise them in any manner;*
- (iv) *that they will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.*
- (v) *that they will not leave India without prior permission of the Court.*

11. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioners.

12. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

June 30, 2023
(raman)

(Sushil Kukreja)
Judge