



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. M.P.(M) No. 748 of 2023

Reserved on: 31.03.2023

Decided on: 05.04.2023

KiranPetitioner

Versus

State of Himachal PradeshRespondent

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner: Mr. N. S. Chandel, Senior Advocate, with Mr. Rajesh Verma, Advocate.

For the respondent: Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2. Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku

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

aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3. On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was lying in a grass land in village

Samoh. Police reached the spot. Sh. Ramesh Kumar, father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4. During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and other co-accused namely Devi Dass S/o Sh. Jhamdiya Ram, Hem Raj alias Kaku S/o Sh. Devi Dass, Chaman Lal S/o Sh. Devi Dass, Laldhar S/o Agnu Prasad and Joginder Rajput S/o Gaindan Lal.

5. The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence

is stated to have been found against petitioner and other co-accused. It is alleged that the petitioner and other co-accused persons namely Devi Dass, Hem Raj alias Kaku and Chaman Lal had enmity with the family of deceased and all the accused persons having criminally conspired had murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6. Petitioner was arrested on 22.7.2022. She remained in police custody till 02.08.2022 and thereafter she was remanded to judicial custody. Petitioner is still in judicial custody.

7. It is contended on behalf of the petitioner that her prolonged custody is unwarranted. The investigating agency has not been able to find any incriminating evidence against petitioner. She has been implicated merely on the asking of the complainant. It is further contended that petitioner has committed no offence. The challan stands filed. Most of the prosecution witnesses are related to the deceased and they have joined hands with

the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. She has undertaken to abide by all the terms and conditions as may be imposed against her.

8. Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. She is accused of commission of a very heinous offence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10. The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct

evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 the petitioner and other co-accused had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed the petitioner cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of petitioner and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11. Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie assess the seriousness and gravity of accusations and to find out the existence of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only for such

purpose that the material relied upon by the investigating agency has been noticed as above.

12. Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

13. The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held 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."

15. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment 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.”

16. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

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, In re, (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, In re, 1923 SCC Online*

Cal 318, that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. H. L. Hutchinson, 1931 SCC online 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.

6. However, we should not be understood to mean that bail should be granted in every case. 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.”

17. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon’ble Supreme Court in para 47 of the judgment, held as under:

“47. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in *Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598* and *Prasanta Kumar Sarkar v. Ashis Chatterjee (2010) 14 SCC 496*. These decisions as well as the decision in *Sanjay Chandra (supra)* were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in *The State of Kerala v. Mahesh (2021) 14 SCC 86*, where the Court observed: (SCC para 21)

“21.All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being

threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.”

Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant.”

18. Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of petitioner with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand-mother of deceased regarding having noticed the petitioner cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19. Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner.

In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses

can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22. Petitioner is already in custody since 22.07.2022. Her further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, she will suffer the legal consequences.

23. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on her

furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one surety in the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

- i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.
- ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.
- 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 and shall not tamper with the prosecution evidence.
- iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order 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.

5th April, 2023
(GR)

(Satyen Vaidya)
Judge