



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Misc. Petition (Main) No. 2406 of 2022

Date of Decision: 23.11.2022

Sarabjit

.....Petitioner.

Versus

State of Himachal Pradesh

.....Respondent

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes

For the Petitioner: Mr. Raman Jamalta, Advocate.

For the respondent: Mr. Sudhir Bhatnagar and Mr. Narender Guleria, Additional Advocates General, with Ms. Svaneel Jaswal, Deputy Advocate General and Mr. Sunny Dhatwalia, Assistant Advocate General.

Sandeep Sharma, J. (Oral)

By way of present petition filed under S. 439 CrPC, bail petitioner namely Sarabjit has approached this Court, for grant of regular bail in FIR No. 161/2018, dated 31.3.2018 under Ss. 302, 201 and 120-B of the IPC, registered at Police Station Una, District Una, Himachal Pradesh.

2. Respondent-State has filed the status report and ASI Surjeet Singh has come present with the cords. Record perused and returned.

3. Close scrutiny of the record reveals that on 31.3.2018, complainant namely Sunil Kumar, who happens to be nephew of the deceased Manjeet, got his statement recorded under Section 154 Cr.PC, alleging therein that deceased was his maternal aunt (maami), who used to live in a rented accommodation alongwith her family at Mehatpur Basdehra, ward No.2. Complainant alleged that on 31.3.2018 at 8am, his father informed him that his maternal aunt Manjeet has expired. Complainant further alleged that after having seen the dead body of the deceased, he found that there were marks of strangulation on her neck and when he inquired from the daughter in law of the deceased maternal aunt i.e. bail petitioner herein, for the reason of marks on the body of the deceased, she disclosed him that last night, deceased Manjeet had headache and she had given massage to her head. Complainant alleged that CCTV Central Monitor System was kept in the bedroom of the deceased, but same was found to be switched off between 1;00 am to 2;15am in the intervening night of the alleged incident. Complainant in the totality of the facts and circumstances detailed herein above, suspected that his deceased maternal aunt has been murdered by her daughter in law i.e. present bail petitioner and as such, FIR detailed herein above came to be lodged against the petitioner and two co-accused namely Kanchan Bala and Gur Sewak. Since co-accused Kanchan Bala was juvenile at the time of the alleged incident, she already stands enlarged on bail,

whereas petitioner and other co-accused Gur Sewak are behind the bars. Since challan stands filed in the competent court of law and statements of material prosecution witnesses stand recorded coupled with the fact that bail petitioner is behind bars for more than three years, she has approached this Court in the instant proceedings, for grant of regular bail.

4. Mr. Narinder Guleria, learned Additional Advocate General, while fairly acknowledging the factum with regard to filing of Challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view gravity of the offence alleged to have been committed by him, he does not deserve any leniency and his prayer for grant of bail, deserves outright rejection. Mr. Guleria further submits that otherwise also, only 13 witnesses remain to be examined and for that purpose, court below has already fixed the date and as such, it may not be in the interest of justice to enlarge him on bail, because, in that event, she may not only flee from justice but may also temper with the prosecution evidence.

5. Having heard learned counsel for the parties and perused material available on record, especially statement of complaint recorded under Section 154 Cr.PC, this court finds that though there is no eye witness to the alleged incident of murder, if any, allegedly committed by the present bail petitioner with the help and aid of other

co-accused namely Kanchan Bala and Gur Sewak, but there is circumstantial evidence against them. Since CCTV Camera installed in the room of the deceased was found to be switched off between 1;00am to 2;15am and no plausible explanation qua the same came to be rendered by the accused named in the FIR, there is a strong suspicion that present bail petitioner in connivance with the other co-accused named in the FIR murdered her mother in law.

6. No doubt, petitioner is alleged to have committed heinous crime of murder, but such act, if any, of her is yet to be proved on record by leading cogent and convincing evidence. In the case at hand, petitioner is behind bars for more than three years that too along with her minor child. This Court finds force in the submission of Mr. Raman Jamalta, learned counsel for the petitioner that child cannot be allowed become the victim of the offence, if any, committed by his mother, who is minor and is/was compelled to live with his mother in the jail. Keeping in view his future and to avoid serious impact, if any, on his psyche, it would not be safe to keep minor child in jail alongwith his mother for an indefinite period. Whether petitioner has committed offence punishable under Section 302 of IPC or not is a question to be decided by the court below in totality of evidence, collected on record by the prosecution, but even if it is presumed that petitioner has committed offence punishable under Section 302 and in all probabilities, she shall be punished for the same, she deserves to

be enlarged on bail so that her child is introduced to other family members and he gets used to live with other family members, especially father. In the event of petitioner being convicted for her having committed offence punishable under Section 302 IPC, she may have to live in jail for a long time and in this situation, minor child, who is living with the bail petitioner in jail, needs to develop acquaintance with other family members so that he does not get affected of the trauma of her separation from his mother.

7. Apart from above, there is another aspect of the matter that bail petitioner is behind the bars for more than three years and till date, trial has not been concluded. Though record reveals that 31 witnesses have been examined, but 13 witnesses yet remain to be examined. Though in the case at hand, court below has fixed the matter for 5.12.2022, for recording the statement of remaining witnesses, but this Court has reason to presume and believe that on one day, it may not be possible for the court below to record the statement of all the remaining witnesses. Recording of statements of all the remaining witnesses is likely to take considerable time and thereafter matter is to be kept for recording the statement of accused under Section 313 Cr.PC. In all probabilities, considerable time is likely to be consumed in the conclusion of the trial and as such, prayer made by the petitioner for grant of bail, for the reasons as have been discussed herein above, needs to be considered and allowed.

Moreover, this Court finds that statements of all the material prosecution witnesses already stand recorded and as such, there is no force in the apprehension of learned Additional Advocate General that in the event of petitioner's being enlarged on bail, she may temper with the prosecution evidence.

8. Having taken note of the fact that the bail petitioner is behind bars for three years and 13 witnesses remain to be examined, this court has reason to believe that considerable time is still likely to be consumed in conclusion of the trial and it may not be in the interest of justice to allow the bail petitioner to remain behind the bars for an indefinite period, as it would definitely amount to pre-trial conviction of her.

9. Needless to say that speedy trial is legal right of the accused and one cannot be made to suffer indefinitely for delay in trial and as such, this Court sees no reason to keep the bail petitioner behind the bars for indefinite period during trial. Delay in trial has been held to be in violation of the right guaranteed under article 21 of Constitution of India.

10. Hon'ble Apex Court in case titled ***Umarmia Alias Mamumia v. State of Gujarat, (2017) 2 SCC 731***, has held delay in criminal trial to be in violation of right guaranteed to an accused under Article 21 of the Constitution of India. Relevant para of the afore judgment reads as under:-

“11. This Court has consistently recognised the right of the accused for a speedy trial. Delay in criminal trial has been held to be in violation of the right guaranteed to an accused under [Article 21](#) of the Constitution of India. (See: Supreme Court [Legal Aid Committee v. Union of India](#), (1994) 6 SCC 731; [Shaheen Welfare Assn. v. Union of India](#), (1996) 2 SCC 616) Accused, even in cases under TADA, have been released on bail on the ground that they have been in jail for a long period of time and there was no likelihood of the completion of the trial at the earliest. (See: [Paramjit Singh v. State \(NCT of Delhi\)](#), (1999) 9 SCC 252 and [Babba v. State of Maharashtra](#), (2005) 11 SCC 569).

11. Reliance is placed upon judgment passed by Hon’ble Apex Court in **Union of India v. K.A. Najeeb**, Criminal Appeal No. 98 of 2021, wherein it has been held as under:

“18. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

12. Reliance is also placed upon judgment passed by Hon'ble Apex Court in **Prabhakar Tewari v. State of U.P. and Anr**, Criminal Appeal No. 152 of 2020, wherein it has been held as under: “

“2.The accused is Malkhan Singh in this appeal. He was named in the FIR by the appellant Prabhakar Tewari as one of the five persons who had intercepted the motorcycle on which the deceased victim was riding, in front of Warisganj Railway Station (Halt) on the highway. All the five accused persons, including Malkhan Singh, as per the F.I.R. and majority of the witness statements, had fired several rounds upon the deceased victim. The statement of Rahul Tewari recorded on 15th March, 2019, Shubham Tewari recorded on 12 th April, 2019 and Mahipam Mishra recorded on 20th April 2019 giving description of the offending incident has been relied upon by the appellant. It is also submitted that there are other criminal cases pending against him. Learned counsel for the accusedrespondent no.2 has however pointed out the delay in recording the witness statements. The accused has been in custody for about seven months. In this case also, we find no error or impropriety in exercise of discretion by the High Court in granting bail to the accused Malkhan Singh. The reason why we come to this conclusion is broadly the same as in the previous appeal. This appeal is also dismissed and the order of the High Court is affirmed.”

13. In the aforesaid judgments, Hon'ble Apex Court has held that while considering the prayer for grant of bail, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of

incarceration already undergone has exceeded a substantial part of the prescribed sentence.

14. Otherwise also, petitioner is not a habitual offender or a hardened criminal, who in the event of being enlarged on bail, may flee from justice or again indulge in such activities, rather she being local resident of area would be always available for trial.

15. 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 cannot 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.

16. 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. 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. Apprehension expressed by learned Assistant 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.

17. 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.

18. 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.

19. In view of above, bail petitioner has carved out a case for himself, as such, present petition is allowed. Bail petitioner is ordered to be enlarged on bail, subject to furnishing bail bonds in the sum of Rs.2.00 lac with two sureties surety in the like amount each, to the satisfaction of the learned trial Court, besides the following conditions:

- a. She shall make herself 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. She shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- c. She shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or the Police Officer; and
- d. She shall not leave the territory of India without the prior permission of the Court.”

20. It is clarified that if the petitioner misuses her liberty or violates any of the conditions imposed upon her, the investigating agency shall be free to move this Court for cancellation of the bail.

21. 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 application alone. The bail petition stands accordingly disposed of.

22. A downloaded copy of this order shall be accepted by the learned trial Court, while accepting the bail bonds from the petitioner and in case, said court intends to ascertain the veracity of the downloaded copy of order presented to it, same may be ascertained from the official website of this Court.

November 23, 2022

manjit

**(Sandeep Sharma),
Judge**