



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 3rd DAY OF NOVEMBER, 2022
BEFORE
HON'BLE MR. JUSTICE SANDEEP SHARMA
CRIMINAL MISC. PETITION (MAIN) No.2304 of 2022

Between:

**MOHAMMAD SHARIF, S/O
 MOHD. SHKHA, AGED ABOUT
 22 YEARS, R/O VPO JASPALON,
 TEHSIL AND DISTRICT
 LUDHIANA, PUNJAB, ATE
 PRESENTLY IN JUDICIAL
 CUSTODY.**

....PETITIONER

**(MR. JAVED KHAN,
 ADVOCATE)**

AND

STATE OF HIMACHAL PRADESH.

....RESPONDENT

**(MR. NARENDER GULERIA,
 ADDITIONAL ADVOCATE
 GENERAL, WITH MR. SUNNY
 DHATWALIA, ASSISTANT
 ADVOCATE GENERAL)**

**(MR. ONKAR JAIRATH,
 ADVOCATE FOR THE
 COMPLAINANT)**

Whether approved for reporting?. Yes.

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

ORDER

Bail petitioner, who is behind the bars since 30.3.2022, has approached this court in the instant proceedings filed under Section 439 Cr.PC, for grant of regular bail, in case FIR No. 46/22 dated 12.2.2022, registered at Police Station Sadar, District Una, Himachal Pradesh, under Sections 457, 380, 485, 201 and 120-B IPC.

2. Pursuant to order dated 18.10.2022, respondent-state has filed the status report. SI/IO Ajeet Singh, PS Una, has also come present with the records. Records perused and returned.

3. Close scrutiny of record/status report reveals that on 12.2.2022, police after having received information that locks put on the shutters of grocery shop in Jalhera, District Una, reached on the spot and found that apart from locks put on the shutter back wall of the shop was also broken. Complainant Devinder Nath Puri, who happens to be the proprietor of Ms. Puri Brother, Jalhera gave statement to the police under Section 154 CrPC, alleging therein that on 11.2.2022 at 8pm, he alongwith his brother Sanjeev Kumar and nephew Sahil after closing their shop came to Ghaluwal (Saloh), but on the next day, at 8.10am when they reached at their shop, locks put on the shutter were found to be broken. He also alleged that when shop was opened, one side wall was also found to be

broken. He alleged that Rs.9.5 lac kept in the chest of the counter was also found to have been stolen. In the aforesaid background, police lodged FIR under Sections 380 and 457 of IPC and during investigation, found the involvement of persons namely Shakha alias Mohmad Shakhi, Talib Hussain, Mohmad Shafi and Mohmad Sharif. i.e. present bail petitioner. Investigation revealed that persons namely Talib Hussain, Mohd. Shariff and the Mohamad Shafi after having broken the locks and side wall of the shop committed theft in the shop of the complainant. During investigation accused namely Talib Hussain and bail Mohd. Shafi disclosed to the police that they alongwith co-accused Mohmad Sharif i.e. present bail petitioner had committed theft of Rs. 9.5 lac, but such amount was handed over by them to the accused Shakha alias Mohd. Shakhi, who had told them that since matter has come to the notice of the police, they are required to refund the money. Investigation reveals that though accused Shakha alias Mohd. Shakhi took the stolen money from the accused Talib Hussain and Mohd. Shafi, but never deposited the same with the police and as such, he was also arrested. Accused namely Shakhi Shakha alias Mohd. Shakhi already stands enlarged on bail. Since investigation in the case is complete and nothing remains to be recovered from the present bail petitioner, he

has approached this Court in the instant proceedings, praying therein for grant of regular bail.

4. Mr. Narender Guleria, learned Additional Advocate General while fairly admitting factum with regard to filing of the challan in the competent court of law contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency. Lastly, Mr. Guleria contends that since statements of material prosecution witnesses are yet to be recorded, it would be not in the interest of justice to enlarge the bail petitioner on bail, which in the event of his being enlarged on bail may not only flee from justice, but may temper with the prosecution evidence.

5. Mr. Onkar Jairath, learned counsel appearing for the complainant submits that keeping in view the antecedents of the bail petitioner as well as other co-accused, it may not be in the interest of justice to enlarge him on bail because in the event of being enlarged on bail, he may cause harm to the complainant

6. Having heard learned counsel for the parties and perused material available on this record, this Court finds that as of today, sum of Rs. 5,10,000/- out of total sum of Rs. 9.5 lac allegedly stolen by the

petitioner and other co-accused already stands recovered. As per status report, sum of Rs. 4,40,000/- is yet to be recovered. As per the investigation, co-accused Talib Hussain and Mohd. Shafi after having committed theft had handed over the sum of Rs. 4.00 lac to co-accused Mohd. Shakha alias Shakhi, who in turn failed to deposit the same with the police, meaning thereby, Rs. 4.00 lac were to be deposited by Shakha alias Mohd. Shakhi. As far as remaining sum of Rs. 5,10,000/- allegedly kept by the accused Talib Hussain and Mohd. Shafi and present bail petitioner already stands recovered as has been stated in the bail petition and as such, bail petition cannot be rejected on the ground of recovery, which is yet to be effected as per prosecution story.

7. At this juncture, it would be apt to take note of the fact that while prayer made by the co-accused Shakha alias Mohd. Shakhi for grant of bail was being considered, complainant intervened and alleged that sum of Rs. 31.50 lac was stolen from their shop, but police made him to return only sum of Rs. 9.5 lac. Having taken note of the aforesaid serious allegation, this Court entrusted the inquiry to the Superintendent of Police, Una, but in enquiry, no truth was found in the allegation of the complainant and as such, petitioner ordered enlargement of the co-accused Shakha alias Mohd. Shakhi on bail, who was otherwise not directly

involved in the theft, but allegation against him was only with regard to his having collected money from the accused for depositing to the police. Since in the case at hand, challan already stand filed in the competent court of law and petitioner is behind the bars for more than seven months, it may not be in the interest of justice to curtail the freedom of the bail petitioner for an indefinite period during trial.

8. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law and as such, this Court sees no reason to curtail the freedom of the bail petitioner indefinitely during trial. Apprehension expressed by the learned Additional Advocate General that in the event of petitioner's being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions as has been fairly stated by the learned counsel for the petitioner.

9. Needless to say, 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, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and

not jail. 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.

10. The Hon'ble Apex Court in **Sanjay Chandra versus Central Bureau of Investigation** (2012)1 Supreme Court Cases 49; held as under:-

“ 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. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted 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 India , 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. Apart from the question of prevention being the object of 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 unconvicted person for the propose of giving him a taste of imprisonment as a lesson.”

11. In **Manoranjana Sinh Alias Gupta versus CBI** 2017 (5) SCC 218, The Hon'ble Apex Court has held as under:-

“ This Court in Sanjay Chandra v. CBI, 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 or 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 to 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 ad 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 the 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.”

12. The Hon’ble Apex Court in **Prasanta Kumar Sarkar v. Ashis Chatterjee and Another** (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

13. Reliance is placed on judgment passed by the Hon’ble Apex Court in case titled **Umarmia Alias Mamumia v. State of Gujarat**,

(2017) 2 SCC 731, relevant para whereof has been reproduced herein below:-

“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).

14. Hon’ble Apex Court in Criminal Appeal No. 227/2018, **Dataram Singh vs. State of Uttar Pradesh & Anr.**, decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon’ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon’ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate

case. The relevant paras of the aforesaid judgment are reproduced as under:

“2. 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.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting Section 436A in the Code of Criminal Procedure, 1973.

5. 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.

15. In view of the aforesaid discussion as well as law laid down by the Hon'ble Apex Court, petitioner has carved out a case for grant of bail, accordingly, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to his furnishing personal bond in the sum of Rs. 5,00,000/- with two local sureties in the like amount to the satisfaction of concerned Chief Judicial Magistrate/trial Court, with 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.**

16. 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.

17. 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 petition stands accordingly disposed of.

18. The petitioner is permitted to produce copy of order downloaded from the High Court Website and the trial court shall not insist for certified copy of the order, however, it may verify the order from the High Court website or otherwise.

3rd November, 2022
(manjit)

**(Sandeep Sharma),
Judge**

High Court