

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CrMP(M) No. 816 of 2018  
Decided on July 6, 2018**

Chandra Shekhar Singh ... Petitioner

Versus

State of Himachal Pradesh Respondent

Coram:

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

Whether approved for reporting? <sup>1</sup> yes.

**For the petitioner** : Mr. Ashwani Pathak, Senior Advocate with Mr. V.S. Rathour, Advocate.

**For the respondent** : Mr. S.C. Sharma and Mr. Dinesh Thakur, Addl. AG's with Mr. Amit Kumar, DAG.

Kulbhushan Verma, Addl. SP, SV & ACB, Mandi and Inspector Manoj Kumar, SV & ACB, SIU-II, Shimla.

**Sandeep Sharma, Judge** (oral):

Bail petitioner namely Chander Shekhar Singh, who is present in Court, apprehending his arrest in case FIR No. 03/18 dated 25.6.2018 under Sections 13(1)(e) and Section 13 (2) of Prevention of Corruption Act and Section 120B IPC, registered at Police Station SV & ACB, Kullu, Himachal Pradesh, has approached this Court in the instant proceedings filed under Section 438 CrPC, praying therein for pre-arrest bail.

**2.** Sequel to order dated 29.6.2018, whereby petitioner named herein above, was ordered to be enlarged on bail, in the event of

<sup>1</sup> Whether the reporters of the local papers may be allowed to see the judgment?

his arrest in connection with aforesaid FIR, Mr. Kulbhushan Verma, Addl. SP, SV & ACB has come present with the record. Mr. Dinesh Thakur, learned Additional Advocate General has also placed on record status report, prepared on the basis of investigation carried out by the investigating agency. Record perused and returned.

**3.** Close scrutiny of record/status report suggests that complaint No. 10/17 dated 29.7.2017 was registered by SIU (Special Investigation Unit) against bail petitioner, who at the relevant time was Managing Director, HP State Forest Development Corporation Limited, Shimla, on the allegations that above named person collected disproportionate assets more than his known source of income from illegitimate sources and by way of hatching criminal conspiracy with the help of one Parma Nand son of Ramu, resident of Tihri, Tehsil and District Mandi. During the course of investigation, investigating agency after having procured search warrant from the court of Special Judge, Kullu, Himachal Pradesh, searched house of the bail petitioner and person namely Parma Nand, wherein allegedly certain incriminating documents from the house of the bail petitioner were found. As per investigating agency, bail petitioner who is a non-Himachali, fraudulently purchased property in Himachal Pradesh in the name of Parma Nand in the year 1997, whereafter a villa came to be constructed on the aforesaid land in the year 2014.

During investigation, person namely Parma Nand denied sale/purchase, if any, of land in question, in his name and alleged/claimed that neither there are his signatures on the documents used by the petitioner for obtaining permission, if any, under Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act nor he ever authorized bail petitioner to purchase property in his name. ◇

**4.** During investigation, it also emerged that neither application was moved to the Deputy Commissioner under Section 118 of the Tenancy and Land Reforms Act soliciting therein permission to purchase land in the State nor the Deputy Commissioner ever issued any such permission to the bail petitioner or Parma Nand, to purchase land in the State. In the aforesaid background, FIR detailed hereinabove, came to be lodged against the bail petitioner.

**5.** Mr. Ashwani Pathak, learned Senior Advocate duly assisted by Mr. V.S. Rathour, Advocate, while referring to the status report/record, vehemently argued that since bail petitioner has already joined the investigation in terms of order dated 29.6.2018 and he has handed over documents, if any, in his possession, no fruitful purpose will be served in case police is allowed to investigate him in custody. Mr. Pathak, learned Senior Advocate further states that as per own record of the investigating agency, documents have been already taken into custody by the

investigating agency, which are being further verified and as such, bail petitioner deserves to be enlarged on bail. Mr. Pathak, learned Senior Advocate further states that house in question was constructed on the land, after having obtained requisite permission from the authorities concerned, and as such, no case, if any, is made out against bail petitioner and he deserves to be enlarged on bail. Lastly, Mr. Pathak, learned Senior Advocate contends that bail petitioner is a local resident of area and he shall be available for investigation as and when required and there is no likelihood of his fleeing from justice.

**6.** Mr. Dinesh Thakur, learned Additional Advocate General, while fairly acknowledging factum with regard to joining of investigation by the bail petitioner pursuant to order passed by this Court, contends that keeping in view the gravity of the offence allegedly committed by the bail petitioner, he does not deserve to be enlarged on bail and petition deserves to be dismissed. Mr. Thakur, while refuting aforesaid submission made by the learned counsel representing the bail petitioner, contends that investigation clearly reveals that no prior permission under Section 118 of the Tenancy and Land Reforms Act, was taken by the bail petitioner from the competent authority and documents found from the house of the bail petitioner clearly suggest that he not only forged the document, rather, on the basis of forged documents, managed to have electricity and water connections

installed. Mr. Thakur, learned Additional Advocate General further states that though investigating agency has recovered certain document, but few more documents, which are in the possession of the bail petitioner, are not being handed over to the police, as such, investigating agency is finding it difficult to complete the investigation. Mr. Thakur, learned Additional Advocate General, on the instructions of the Investigating Officer, states that though investigation is almost complete, but for want of certain documents, investigating agency has not arrived at a final conclusion. With the aforesaid submissions, Mr. Thakur, learned Additional Advocate General prayed for rejection of the bail application.

**7.** Having heard the learned counsel representing the parties and gone through the record, especially categorical statement made by the learned Additional Advocate General that bail petitioner has already joined the investigation and is fully cooperating, this Court is persuaded to agree with the contention of Mr. Pathak, learned Senior Advocate, that no fruitful purpose would be served in case custodial interrogation is allowed, as prayed for by the investigating agency. Though, record clearly suggests that certain incriminating documents have been found from the house of the bail petitioner, but, as per investigating agency, these are being verified and as such, this Court sees no force in the argument of Mr. Dinesh Thakur, learned Additional

Advocate General that in the event of petitioner being enlarged on bail, he may tamper with the evidence and material collected on record, as such same deserves to be rejected at this stage. As far as commission of offence if any, under Section 118 of the Tenancy and Land Reforms Act is concerned, this Court is of the view that independent proceedings under aforesaid Act are required to be initiated and cannot be a ground to deny the bail to the bail petitioner. Moreover guilt, if any, of the bail petitioner is yet to be ascertained in accordance with law, by leading cogent and convincing evidence by the investigating agency, as such, it may not be fair to curtail his freedom for an indefinite period, especially when he has already joined the investigation. It has been repeatedly held by Hon'ble Apex Court and this court that freedom of an individual is of utmost importance and can not be curtailed for indefinite period, especially when guilt, if any, is yet to be proved. It is settled law that till such time guilt of a person is proved, he is deemed to be innocent.

**8.** Recently, the 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 further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held 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.*”

9. By now it is well settled 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. The Hon'ble Apex Court in **Sanjay Chandra** versus **Central Bureau of Investigation** (2012)1 Supreme Court Cases 49; has been 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."

**10.** 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 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.

**11.** The Apex Court in **Prasanta Kumar Sarkar versus 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.

**12.** In view of above, bail petitioner has carved out a case for grant of bail and as such, order dated 29.6.2018 is made absolute subject to petitioner furnishing fresh bail bonds in the sum of Rs.2,00,000/- (Rs. Two Lakh) 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.
- (e) He shall surrender passport, if any, held by her.

**13.** 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.

**14.** 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.

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**(Sandeep Sharma)**  
**Judge**

**July 6, 2018**  
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