

**2023 STPL(Web) 29 HP**  
**HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

**SANSAR CHAND**

Petitioner

*VERSUS*

**STATE OF HIMACHAL PRADESH**

Respondent

Cr.MP(M) No. 1267 of 2023-Decided on 14-7-2023

**Bail, Murder**

**Code of Criminal Procedure, 1974 – Section 439 – Indian Penal Code, 1860 – Section 34, 302, 341, 323,504 and 506 – Bail – Murder** – Petitioner behind bar from about two years – Bail Application – Held: This court, having perused statements of material prosecution witnesses, finds that till date no direct evidence, if any, has emerged against the bail petitioner to connect him with the offence punishable under Section 302 IPC. In the statement of PW-4, there are a lot of contradictions and inconsistencies. this court finds that bail petitioner is behind bars for more than one year and 10 month but prosecution has been able to examine only 15 witnesses out of 38 witnesses and as such, this court has reasons to believe that 2-3 years would be taken by learned trial Court to conclude the evidence and if the bail petitioner is kept behind bars during this period, same would be amount to pre-trial conviction, which is not permissible in law. Bail granted with conditions.

(Para 11, 12)

Advocate(s): For the petitioner: Mr. Neel Kamal Sharma, Advocate.

For the Respondent: Mr. Rajan Kahol, Mr. Vishal Panwar and Mr. B.C. Verma, Additional Advocates General with Mr. Rahul Thakur and Mr. Ravi Chauhan, Deputy Advocates General. ASI Pyare Lal, Police Station Hatli, District Mandi, Himachal Pradesh.

**JUDGMENT**

**Sandeep Sharma, J. (Oral)**-Bail petitioner, Sansar Chand, who is behind the bars for the last one year and ten months, has approached this court by way of instant petition filed under S.439 CrPC for grant of regular bail in FIR No. 97, dated 18.9.2021, registered at Police Station Hatli, Tehsil Baldwara, district Mandi, Himachal Pradesh under Ss. 302, 341, 323,504 and 506 read with S.34 IPC.

2. Respondent State has filed status report and Investigating Officer has come present with record. Record perused and returned.

3. Story of the prosecution as emerges from the record/status report is that on 18.9.2021, deceased Ravi Kumar alias Panku got his statement recorded at Police Station Baldwara, District Mandi, alleging that on 17.9.2021 at 9.00 pm, a person namely Nitu (bail petitioner) alongwith another person gave beatings to him at Bhambla bazaar with iron rod, on account of which he suffered injury in left eye and other parts of body. Complainant also alleged that Nitu alongwith his friend obstructed his path and gave beating to him with fists and iron rod but he was able to escape with great difficulty from clutches of both the persons, however, while leaving the spot, the accused named in the FIR extended threats to the complainant. In the aforesaid background, FIR detailed herein above came to be lodged against accused named in the FIR. Since investigation is complete and nothing remains to be recovered from bail petitioner coupled with the fact that coaccused Sanjeev Kumar alias Sanju and Prithi Chand, already stand enlarged on bail, petitioner has approached this court in the instant proceedings, for grant of regular bail.

4. Mr. Neel Kamal Sharma, learned counsel for the petitioner, while making this court peruse the record/status report, vehemently argued that bail petitioner has been falsely implicated in the case. He states that as per own statement of complainant, Nitu is resident of Village Sulpur but the bail petitioner, who has been named in the FIR is resident of village Behi. Learned counsel for the petitioner further submits that material prosecution witnesses examined till date have not supported prosecution case, rather, PW-4 Krishan Chand, star witness of the prosecution, has resiled from his statement given to police, wherein he had allegedly stated that complainant/deceased was given beatings by Sansar Chand alias Nitu (present bail petitioner) alongwith other persons Sanjeev Kumar and Prithi Chand in his Dhaba. Mr. Sharma, while making this court peruse the statements of prosecution witnesses examined till date, tried to persuade this court to agree with him that no case, much less a case under S.302 IPC, is made out against the bail petitioner as such, deserves to be enlarged on bail.

5. Lastly, Mr. Sharma submits that bail petitioner is behind bars for more than one year and ten months but till date prosecution has been able to examine only fifteen witnesses out of thirty eight witnesses. He states that since considerable time is likely to be consumed in conclusion of trial, no fruitful purpose would be served by keeping the petitioner behind bars, especially when nothing remains to be recovered from him and statements of material prosecution witnesses already stand recorded.

6. Mr. Rajan Kahol, learned Additional Advocate General, while fairly admitting factum with regard to filing of Challan in the competent court of law contends that though nothing remains to be recovered from bail petitioner but keeping in view gravity of offence alleged to have been committed by the bail petitioner, he does not deserve leniency and his prayer for bail deserves outright rejection. Mr. Kahol states that there is overwhelming evidence available on record suggestive of the fact that bail petitioner gave merciless beatings to the deceased complainant, as a result of which he died as such, it cannot be said that bail petitioner has been falsely implicated in the case. Mr. Kahol states that as per evidence led on record, bail petitioner namely Sansar Chand alias Nitu is the person, who had given beatings to the deceased complainant and as such no benefit can be derived from the wrong mentioning of Village, if any, by deceased /complainant or witnesses examined by the prosecution till date. While making this court peruse documentary evidence, especially the post-mortem report, Mr. Kahol states that deceased died on account of injury given on his head by bail petitioner with iron wiper and as such, keeping in view gravity of offence alleged to have been committed by the bail petitioner, he does not deserve any leniency and his prayer for bail deserves outright rejection. He states that in the event of being enlarged on bail, bail petitioner may not only flee from justice but may also tamper with evidence. He states that since majority of witnesses stand examined by the prosecution, as such, payer for grant of bail on the ground of inordinate delay is not tenable.

7. Having heard learned counsel for the parties and perused material available on record this court finds that on 18.9.2021, Ravi Kumar complainant, in his statement recorded under S.154 CrPC, alleged that on 17.9.2021 at 9.00 pm he was given beatings by the present bail petitioner, who is driver by profession, alongwith his friends, in Bhambla bazaar in the shop of PW-1. Interestingly, if statement of PW-1 is perused, it suggests that this star witness of the prosecution turned hostile and completely denied factum with regard to beatings, if any given by accused named in FIR to the complainant in his shop. Police placed heavy reliance upon statement of PW-4 Sapna, sister of deceased and mother of deceased, who claimed that before death, complainant disclosed names of all the accused including bail petitioner. If it is so, it is not understood what prevented the Police from mentioning names of all the accused in the FIR on 18.9.2021, rather, record reveals that the names of two accused came to be recorded in the FIR only after recording statement of mother of complainant, under S.161 CrPC, whereby she claimed that statement of complainant/deceased was recorded in the Hospital in her presence and the deceased disclosed the names of all the persons, including coaccused Sanjeev Kumar alias Sanju and Prithi Chand, and the present bail petitioner.

8. No doubt, the deceased in his initial statement given to the police under S.154 CrPC, on the basis of which, FIR came to be lodged, stated that Nitu resident of Sulpur (present bail petitioner) gave him beatings but bail petitioner herein is resident of Village Behi. Though, prosecution has claimed that Villages Sulpur and Behi are adjoining but PW-8 ASI Raj Kumar, in his cross-examination, categorically admitted that Villages Sulpur and Behi are two separate villages. Apart from above, PW-6, Kulbir Singh, Up Pradhan, Gram Panchayat Sulpur Jagot categorically deposed before learned trial Court that Sansar Chand alias Nitu is from Village Behi and he is not known by nick name 'Nitu'. Besides this, PW-7, Desh Raj, Ward Member, Gram Panchayat Sulpur Jagot deposed that Sansar Chand is resident of village Behi and he is not known by nick name 'Nitu'.

9. Sole eye witness Krishan Chand, PW-1 has not supported prosecution case and has specifically denied the factum with regard to beatings, if any, given by the present bail petitioner to the complainant/deceased. Cross-examination conducted upon this witness by learned Public Prosecutor, nowhere suggests that the prosecution was able to extract anything contrary to what this witness stated in his examination-in-chief.

10. Another witness, Sapna (PW-4) deposed that after having received information with regard to beatings, she reached Hospital at Baldwara and in their presence, deceased/complainant disclosed the names of all the accused including the present bail petitioner but she admitted that her statement under S.161 CrPC was recorded at Village Kanjyan on 19.9.2021. Even if for the sake of arguments, statement given by PW-4 with regard to disclosure, if any, made by deceased in her presence at Hospital Baldwara is assumed to be correct, there is nothing to show that why all the accused were not arrayed in the FIR at the first instance by the prosecution, because, admittedly, FIR came to be recorded on the basis of statement of the deceased, recorded under S.154 CrPC.

11. Leaving everything aside, this court, having perused statements of material prosecution witnesses, finds that till date no direct evidence, if any, has emerged against the bail petitioner to connect him with the offence punishable under S.302 IPC. In the statement of PW-4, there are a lot of contradictions and inconsistencies.

12. Though the present case is to be decided by learned trial Court, in totality of evidence led on record by prosecution but, having taken note of the statements of material prosecution witnesses, there appears to be no reason to curtail the freedom of the bail petitioner for an indefinite time during trial, especially, when the bail petitioner has already suffered for one year and ten months. Apart from above, this court finds that bail petitioner is behind bars for more than one year and 10 months but prosecution has been able to examine only 15 witnesses out of 38 witnesses and as such, this court has reasons to believe that 2-3 years would be taken by learned trial Court to conclude the evidence and if the bail petitioner is kept behind bars during this period, same would amount to pre-trial conviction, which is not permissible in law.

13. Since there is no control, if any, of accused in progress of trial, rather he is totally dependent upon steps, if any, taken by the prosecution for early conclusion of the trial, incarceration of accused in jail for indefinite period during the trial would definitely amount to pre-trial conviction, which is totally impermissible in law.

14. 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).

15. 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 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 Statute 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.”

16. 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 12th 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 accused- respondent 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.”

17. In the aforesaid judgment, 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.

18. In the instant case, bail petitioner is behind bars for one year and ten months and till date trial has not been completed and there are very bleak chances of conclusion of the same in near future, as such, there appears to be no justification to keep the bail petitioner behind the bars for an indefinite period, during

trial, keeping in view the fact that the bail petitioner is a first offender and there is no other case registered against him, apart from the present one.

19. No doubt, in the instant case, petitioner is accused of having indulged in heinous crime having adverse impact upon the society but mere gravity of offence cannot be the sole criteria to reject the bail rather certain other factors are also required to be taken into consideration. Reliance in this regard is placed upon the judgment passed by this Court in Jeet Ram v. State of H.P., Latest HLJ 2003(HP) 23, wherein it has been held as under:-

“7. As is the case of the prosecution, the only role attributed to the accused persons is that they caught hold of the deceased and their coaccused Savitri and Bimla pelted stones at him and thereafter Bhupender gave him the fatal blow with a 'Draft'. Prima facie it is difficult to believe that when a person is caught hold of by three persons two other persons are pelting stones at him, then such person and those persons who have caught hold of him will not sustain any injury. Therefore, the version regarding pelting of stones and holding of the deceased is prima facie clouded by suspicion as none of the accused persons who are alleged to have caught hold of the deceased while co-accused Savitri and Bimla were pelting stones at the deceased did not receive any injury whatsoever and no injury caused by the pelting of stones was found on the person of the deceased. Mere catching hold of the deceased by the accused persons may not necessarily lead to the conclusion that they had the common object of killing the deceased as the applicability of Section 149, IPC, in the facts of the case, is a debatable question.

8. In Thakar Singh v. State of Punjab, 1969 Cur LJ 810 (relied upon by the learned Counsel for the accused persons to substantiate his contention) wherein the case of the prosecution was that accused Niranjan Singh caught hold of the deceased and fell him down and accused Thakar Singh throttled his neck, the Punjab and Haryana High Court held as under :

"..... It is not a case in which it can be legitimately contended on behalf of the prosecution that there was any pre-planned common intention on the part of both Niranjan Singh and his father Thakar Singh in throttling the deceased. There could be no such intention on the part of Niranjan Singh even in executing his act of catching hold of the boy by the arms and throwing him down on the ground. The act of throttling by Thakar Singh followed per se and was independent of the act of throwing the boy down by Niranjan Singh. Thus, there is no community of intention in the act performed by Niranjan Singh and that executed by Thakar Singh. The two are distinct ones and one has nothing to do with the other. No intention on the part of Niranjan Singh from his act could be inferred in common with the intention of throttling by Thakar Singh, which followed later on. It is not a case in which it could be held that throwing down was committed by Niranjan Singh in furtherance of the common intention of throttling by Thakar Singh. Thus, the applicability of Section 34 of the Indian Penal Code is uncalled for. Niranjan Singh appellant could not be held vicariously liable by virtue of that Section. This is additional ground of his being entitled to acquittal."

9. In Jaspal Singh v. State of Haryana, 1986 (2) Recent CR 582 (2) wherein one of the accused caught hold of the deceased while armed with a stick but did not cause any injury to the deceased whereas his co-accused caused injuries to the deceased which resulted in his death, the Punjab and Haryana High Court granted bail to the accused who had only caught hold of the deceased while on the following premise :

"Though the motive was with the petitioner and he caught hold of the deceased while armed with a stick, he did, not cause any injury to the deceased. Rather his co-accused did cause injuries to the deceased which resulted in his death. In this situation, applicability of Section 34 Indian Penal Code is a moot point. It would thus be apt that the petitioner gets the concession of bail."

10. In Kuldip Singh v. State of Punjab, 1994 (3) Rec Cri R 137 : (1994 Cri LJ 2201) (SC) where one of the accused inflicted the injury on the head of the injured with sharp edged weapon and the second accused gave 'Lathi' blow on his shoulder causing simple injury allegedly with the common intention of accused in an attempt to commit the murder of the injured, the Hon'ble Supreme Court held that the injury on the head of the injured was serious one and proved to be grievous, therefore, the offence under Section 307, I.P.C. is made out against Kuldip Singh who caused such injury but in so far as the other co-accused is concerned, he inflicted only one blow on the shoulder with the 'Lathi' causing swelling, therefore, it could not be said that he shared the common intention along with the Kuldip Singh in attempt to commit the murder of the injured."

“12. There is no doubt that offence punishable under Section 302, I.P.C. is a grave offence for which the extreme penalty of death has been provided in law. However, the mere gravity of the offence and the severity of punishment is no ground for rejection of bail,

while deciding the question of grant or refusal of the bail, other factors such as the nature of evidence, the part played by the accused in the commission of the offence and the likelihood of the accused absconding or, tampering with prosecution evidence has also to be taken into account”.

20. No doubt, gravity of offence is an important factor to be taken into consideration, while considering prayer for grant of bail, but that may not be the sole criteria for rejecting prayer for grant of bail.

21. Hon'ble Apex Court and this Hon'ble Court have held in a catena of judgments that one is deemed to be innocent, till the time, his/her guilt is proved in accordance with law. In the case at hand, guilt, if any, of the bail petitioner is yet to be proved in accordance with law, as such, this court sees no reason to let the bail petitioner incarcerated in jail, for an indefinite period, especially when he is behind the bars for more than one year and ten months, coupled with the fact that another co-accused Sanjeev Kumar and Prithi Chand, already stand enlarged on bail.

22. Apprehension expressed by of learned Additional Advocate General that in the event of the bail petitioner being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions.

23. 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.

24. 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.

25. In Manoranjana Singh 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.

26. 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.

27. 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. 2,00,000/- 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.

28. 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.

29. 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.

30. The petitioner is permitted to produce copy of the 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.

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