

**HIMACHAL PRADESH HIGH COURT****Before : Rakesh Kainthla, J.****Decided on : 07-11-2023**

Cr. MPM No. 2549 of 2023

**KARAMVEER ..... Appellant****Vs.****STATE OF HIMACHAL PRADESH — Respondent****Sections, Acts, Rules, and Articles Mentioned:**

- Article 21 of the Constitution of India
- Criminal Procedure Code (CrPC), Sections 41A, 496, 497(5), 561-A

**Subject of Judgment:**

- Regular Bail Application

**Headnotes:**

Regular Bail – Denial of Regular Bail – Petitioner's repeated absconding and non-cooperation in the investigation – Petitioner declared a proclaimed offender twice – Bail application dismissed due to potential obstruction of a fair trial and risk of absconding. [Para 10-14]

Criminal Procedure – Fair Trial and Bail Considerations – Importance of ensuring a fair trial for both the accused and the prosecution – Conduct of the accused obstructing the trial deemed a valid ground for denying bail – Supreme Court precedents on bail considerations emphasized. [Para 7, 11]

Proclaimed Offender – Impact on Bail Application – Petitioner's history of absconding affecting the bail decision – Court emphasizes the necessity of the accused's presence for a fair trial – Miscommunication with counsel not accepted as a valid excuse for non-appearance. [Para 12-13]

Decision – Petitioner's bail application for regular bail rejected – Court finds no merit in the petitioner's reasons for absconding and non-compliance with legal proceedings – Observations made in the judgment solely for the purpose of this petition and not affecting the merits of the case. [Para 14-15]

#### **Referred Cases:**

- Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 SCC OnLine SC 1059
- Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528
- State of Haryana vs Dharamraj 2023 SCC Online 1085
- Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598
- Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496
- State of Orissa Versus Mahimanand Mishra (2018) 10 SCC 516
- Talab Haji Hussain Versus Madhukar Purshottam Mondkar AIR 1958 SC 376

#### **JUDGMENT**

**Rakesh Kainthla, J.** - The petitioner has filed the present petition for seeking regular bail. It has been asserted that the petitioner was arrested by the police. As per the prosecution version the petitioner tried to crush the informant Davinder Kumar, Chowkidar, Forest Corporation, Sheelghat, under the wheels of the truck on 26.12.2005, at about 2:15 a.m. The Informant sustained injuries. The police conducted the investigation. The petitioner did not associate during the investigation and he was declared proclaimed offender on 23.05.2007. He was arrested on 03.03.2020 and was released on 25.04.2020. The petitioner was again declared as a proclaimed offender on 08.12.2021, as he could not appear before the learned Court due to miscommunication with his counsel. The petitioner remained under the impression that his counsel would inform him about the date of hearing but no such intimation was given to him. The pre-trial detention will amount to

punishment, which is violative of Article 21 of the Constitution of India. The petitioner is innocent and has been falsely implicated. Therefore, it was prayed that the present petition be allowed and the petitioner be released on bail.

2. The State has filed a status report asserting that in addition to the informant-Davinder Singh, Rattan Lal, Mohan Singh and Durga Chand were also employed as Chowkidars in the Forest Corporation, Sheelghat. The informant noticed a truck bearing registration number HP11-1122 on 26.12.2005 at 2:15 a.m. 7-8 persons got down from the truck and tried to take away the timber of the Corporation. The informant woke Rattan Lal, Mohan Singh and Durga Chand and they went to the spot. The driver tried to crush the informant under the wheels of the truck. The informant sustained injuries on his legs. The police conducted the investigation and presented the challan before the Court. The petitioner absconded. He was declared a proclaimed offender. He was arrested on 03.03.2020 and was released on bail on 25.04.2020. He again absconded and was declared a proclaimed offender on 08.12.2021. He was arrested on 22.11.2023. The petitioner evaded the trial and absconded. The petitioner can again abscond in case he is enlarged on bail. Therefore, it was prayed that the present bail application be dismissed.

3. I have heard Mr. Rajul Chauhan, learned counsel for the petitioner and Mr. Parshant Sen, learned Deputy Advocate General for the respondent State.

4. Mr. Rajul Chauhan, learned counsel for the petitioner submitted that the petitioner could not appear before the learned Trial Court due to miscommunication from his counsel. The petitioner would abide by all the terms and conditions, which may be imposed by the Court while releasing on bail. Therefore, he prayed that the petitioner be released him on bail.

5. Mr. Parshent Sen, learned Deputy Advocate General, submitted that the petitioner has absconded twice and will abscond again in case he is released on bail. Therefore, he prayed that the bail petition of the petitioner be dismissed.

6. I have given considerable thought to the rival submissions at the bar and have gone through the record carefully.

7. The parameters for granting bail were considered by the Hon'ble Supreme Court in **Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023SCC OnLine SC 1059**, wherein it was observed as under:-

"12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

13. We may also profitably refer to a decision of this Court in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav (2004) 7 SCC 528** where the parameters to be taken into consideration for the grant of bail by the Courts has been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See **Ram GovindUpadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688]** and **Puran v. Rambilas [(2001) 6 SCC338:2001 SCC (Cri) 1124].**)"

8. A similar view was taken in **State of Haryana vs Dharamraj** 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in **Ram GovindUpadhyay v. Sudarshan Singh, (2002) 3 SCC 598** and **Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528**. In **Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496**, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(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.'

9. The present case has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

10. It is not disputed that the petitioner was declared a proclaimed offender twice. One of the criteria for releasing the person on bail is that he will attend the trial. It was laid down by the Hon'ble Supreme Court in **State of Orissa Versus Mahimanand Mishra (2018) 10 SCC 516** that while considering a bail application, the Court should also look at the possibility of the appearance of the accused to face trial. When the accused had absconded and was arrested after a lookout circular was issued, he was not entitled to bail.

11. It was laid down by the Hon'ble Supreme Court in **Talab Haji Hussain Versus Madhukar Purshottam Mondkar AIR 1958 SC 376** that the primary object of the Criminal Procedure is to ensure a fair trial and where the progress of a trial is obstructed by the accused, the Court is justified in taking him into custody. It was observed:-

"[6] Now it is obvious that the primary object of criminal procedure is to ensure a fair trial of accused persons. Every criminal trial begins with the presumption of innocence in favour of the accused, and provisions of the Code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption, but a fair trial has naturally two objects in view; it must be fair to the accused and must also be fair to the prosecution. The test of fairness in a criminal trial must be judged from this dual point of view. It is therefore of the utmost importance that, in a criminal trial, witnesses should be able to give evidence without any inducement or threat either from the prosecution or the defence. A criminal trial must never be so conducted by the prosecution as would lead to the 'conviction of an innocent person; similarly, the progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty offender. The acquittal of the innocent and the conviction of the guilty are the objects of a criminal trial and so there can be no possible doubt that, if any conduct on the part of an accused person is likely to obstruct a fair trial, there is an occasion for the exercise of the inherent power of the High Courts to secure the ends of justice. There can be no more important requirement of the ends of justice than the uninterrupted progress of a fair trial; and it is for the continuance of such a fair trial that the inherent powers of the High Courts are sought to be invoked by the prosecution in cases where it is alleged that accused persons, either by suborning or intimidating witnesses, are obstructing the smooth progress of a fair trial, Similarly, if an accused person who is released on bail jumps bail

and attempts to run to a foreign country to escape the trial, that again would be a case where the exercise of the inherent power would be justified in order to compel the accused to submit to a fair trial and not to escape its consequences by taking advantage of the fact that he has been released on bail and by absconding to another country. In other words, if the conduct of the accused person subsequent to his release on bail puts in jeopardy the progress of a fair trial itself and if there is no other remedy which can be effectively used against the accused person, in such a case the inherent power of the High Court can be legitimately invoked. In regard to non-bailable offences, there is no need to invoke such power because S. 497 (5) specifically deals with such cases. The question which we have to decide in this case is whether the exercise of inherent power under S. 561-A against persons accused of bailable offences, who have been released on bail, is contrary to or inconsistent with the provisions of S. 496 of the Code of Criminal Procedure."

12. In the present case, the petitioner has obstructed the fair trial of the case due to his conduct; as such he is not entitled to a concession of bail.

13. The plea that there was a miscommunication from the counsel cannot be accepted because the declaration of proclaimed offender means that first the summons was issued, thereafter the warrants were issued and the proclamation was affixed on the homestead. Therefore, the petitioner cannot plead ignorance of the proceedings and blame it on the counsel.

14. In view of the above, the petitioner is not entitled to a concession of bail. Hence, the present petition fails and the same is dismissed.

15. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

© All Rights Reserved @ LAWYER E NEWS

\*Disclaimer: Always compare with the original copy of judgment from the official website.