



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

**Cr. M.P.(M) No. 340 of 2023**

**Reserved on: 20.02.2023**

**Decided on: 24.02.2023**

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Yuvraj Singh Jadeja

.....Petitioner

**Versus**

State of Himachal Pradesh

.....Respondent

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***Coram***

***The Hon'ble Mr. Justice Satyen Vaidya, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes***

**For the petitioner:**

**Mr. Karan Kapoor, Advocate.**

**For the respondent:**

**Mr. Rajan Kahol and Mr. Rakesh Dhaulta, Additional Advocate Generals.**

**ASI Uttam Chand, P.S. Keylong,  
District Lahaul Spiti, H.P.  
present alongwith records.**

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**Satyen Vaidya, Judge.**

By way of instant petition, petitioner has prayed for grant of bail in case FIR No. 93 of 2022, dated 13.8.2022, under Sections 302, 120-B and 201 of IPC, registered at Police Station, Keylong, District Lahaul Spiti, H.P.

<sup>1</sup>Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

2. Petitioner was arrested on 03.09.2022. He remained in police custody till 14.9.2022 in the first instance and thereafter from 16.9.2022 to 19.9.2022. Petitioner is in judicial custody since 19.9.2022.

3. Brief facts necessary for adjudication of the petition are that the petitioner was married to Ms. Nidhiba (now deceased) on 05.02.2022 in Ahmedabad. Petitioner and his wife (deceased Ms. Nidhiba) undertook a pleasure trip to Leh-Ladakh in the month of July, 2022 through a Travel Agency named "Zoyo Trip Holidays" (a unit of Manali-Leh Adventure). On return journey, they halted at a place named "Jispa" in Lahaul-Spiti District, Himachal Pradesh. The travel agent had booked their stay in Himalayan Spirit Camp, Jispa, which had "tented" accommodation. Petitioner and deceased stayed in a tent, which was pitched near to the 'Bhaga River'. During midnight, the body of Ms. Nidhiba was found, half floating in 'Bhaga River' with her left leg struck in the crate wire used at the spot to hold the river bank. Ms. Nidhiba when retrieved from the spot was found dead.

4. There are rival versions regarding the cause of death of Ms. Nidhiba. The first version is that the deceased and petitioner after having their dinner in Himalayan Spirit Camp enjoyed the "Bon-fire" till about 11.00 p.m. Thereafter the deceased expressed her wish to sit on the bank of river for some time with petitioner. Both of them sat on the river bank till about 12.45 a.m. and then came back to their tent. The deceased was still interested to sit on the river bank, however, petitioner was feeling sleepy and had in fact gone to sleep. After some time, petitioner noticed that the deceased was not on the bed. He called on the mobile number of his wife, but she did not attend the phone. Petitioner came out of tent and found none. He went to the river bank and found that the foot of his wife was struck in the crate wire and rest of her body was floating in the river water. The mobile phone of the deceased was lying on the spot. Petitioner tried to retrieve the body of his wife from water, but could not succeed. Thereafter, he raised hue and cry, at which other occupants of the Camp came out and with their help, the

body was taken out. Ambulance was called. The body was taken to hospital, but was declared brought dead.

5. The other version is that the petitioner had forced the face and head of Ms. Nidhiba in the river water for one-two minutes, which resulted in her death. The petitioner, subsequently, is alleged to have concocted a false story regarding accidental fall of his wife in river water.

6. The case was registered. After investigation, the Investigating Agency has concluded that the second version regarding cause of death of Ms. Nidhiba had found support from the evidence collected by it. As per Investigating Agency, the petitioner and his mother were involved in a criminal conspiracy and in pursuance thereto had caused death of Ms. Nidhiba, in a pre-planned manner. It is alleged that Ms. Nidhiba was being harassed by petitioner and his mother for dowry after the marriage. It is also alleged that in the month of June, 2022, petitioner had purchased two Life Insurance Policies for himself and his wife. The fact of purchase of Insurance Policies is also alleged to be an intentional act of petitioner

to derive financial benefits after the death of his wife. On completion of investigation, challan has been presented in the Court with aforesaid allegations.

7. Petitioner has made a prayer for grant of bail on the ground that he has been implicated in a false case at the instance of the parents and other relatives of Ms. Nidhiba. The allegations regarding demand of dowry or harassment of Ms. Nidhiba for such purpose are stated to be baseless. It is contended on behalf of the petitioner that there is not even an iota of evidence to suggest any foul play in the death of Ms. Nidhiba. The investigation has been completed and the Investigating Agency could not collect any legal evidence against petitioner. As per petitioner, the fall of Ms. Nidhiba into river water was purely accidental. It is submitted that petitioner had throughout associated during investigation. He has been in custody since 3.9.2022. The challan stands filed and no fruitful purpose shall be served by detaining the petitioner in custody for indefinite period. It is further submitted that the petitioner has permanent residence and also has roots in the society. He will make himself available for the trial.

8. On the other hand, the prayer for bail has been opposed on behalf of the respondent/State through the learned Additional Advocate General. It is submitted that the petitioner is accused of a very serious and heinous offence and he does not deserve any leniency. It is also submitted that in order to avoid punishment, petitioner may flee from the course of justice, which will adversely affect the trial. As per respondent, the petitioner if released on bail, may tamper with the prosecution evidence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the records of the case carefully.

10. In **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another (2010) 14 SCC 496**, the Hon'ble Supreme Court culled out the following guiding factors to be borne in mind while considering an application for bail :

- 9.(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.”*

11. In the instant case, the accusation against petitioner is that he has murdered his wife. No doubt, the accusation is serious in nature. However, in order to prima-facie assess the seriousness and gravity of accusation as also to prima-facie find out the existence of reasonable grounds for believing that the accused has committed the offence as alleged, a cursory scan of the material collected by the Investigating Agency becomes necessary. Merely because, the accusation is of serious nature and offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

12. The onerous obligation on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other. Needless to say that bail has been held to be the rule and jail as an exception.

13. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

*“21. In bail applications, generally, it has been laid down from the earliest times that 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.*

*22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted 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 this country, 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.*

**23.** *Apart from the question of prevention being the object of a 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 un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.”*

14. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

**“16.** *This Court in [Sanjay Chandra vs. Central Bureau of Investigation](#) (2012) 1 SCC 40, 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 nor 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 a 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 and 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 that 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.”

15. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

“4. 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 *Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658*.

**5.** The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1*, going back to the days of the Magna Carta. In that decision, reference was made to *Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565*, in which it is observed that it was held way back in *Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318*, that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. H. L. Hutchinson, 1931 SCC online All 14*, wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

**6.** However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.”

16. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

*“47. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in [Ram Govind Upadhyay v. Sudarshan Singh \(2002\) 3 SCC 598](#) and [Prasanta Kumar Sarkar v. Ashis Chatterjee \(2010\) 14 SCC 496](#). These decisions as well as the decision in [Sanjay Chandra \(supra\)](#) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in [The State of Kerala v. Mahesh \(2021\) 14 SCC 86](#), where the Court observed: (SCC para 21)*

*“21. ....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses.”*

*Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the*

*precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant.”*

17. Reverting to the facts of the case, noticeably, there is no eye witness. The prosecution has placed reliance mainly on the statements of the parents and other relatives of the deceased. Some documents in the form of transcript of WhatsApp chat between the deceased and her father have also been relied upon. In addition, reliance has been placed on the statements of certain persons, who were present when the petitioner had made alleged inculpatory statements.

18. The allegations against petitioner are subject to proof. In absence of any eye witness to the incident, no such material exists which may lead to a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner. The allegation of demand of dowry and harassment of the deceased for such purpose at the hands of the petitioner and her mother, will be subject to strict scrutiny in absence of the fact that no complaint had been lodged either by the deceased during her life time or by her

parents to any authority regarding the alleged harassment of deceased for demand of dowry.

19. Another circumstance, relied upon by prosecution is the purchase of two Life Insurance Policies by petitioner for himself and his wife jointly in the month of June, 2022. It is alleged that the purchase of such policies was part of the conspiracy and petitioner had purposely purchased such policies with the motive to derive monetary benefits after the death of his wife. The aforesaid fact has two facets. To infer any malafide against the petitioner in purchasing the insurance policies, as aforesaid, something more shall be required to be proved.

20. It can also be noticed that the cause of death of Ms. Nidhiba has been opined to be asphyxia, cardiac arrest, secondary to drowning. The deceased was also opined to be under influence of alcohol at the time of drowning. No other injury was found on the person of the deceased except a bruise on her left leg which was found struck in crate wire.

21. The observations made hereinabove, are only to prima-facie assess the seriousness and gravity of

allegations against the petitioner and the material collected during the investigation to substantiate such accusations.

22. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

23. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility

will again be seen at the time of the trial at the touchstone of well settled principles of law.

24. Petitioner is already in custody since 03.09.2022. His further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, he will suffer the legal consequences. The mother of the petitioner already stands released on bail.

25. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No. 93 of 2022, dated 13.8.2022, under Sections 302, 120-B and 201 of IPC, at Police Station, Keylong, District Lahaul Spiti, H.P., on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

- i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

- ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.
- iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.
- iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

26. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

**24<sup>th</sup> February, 2023.**  
**(GR)**

**(Satyen Vaidya)**  
**Vacation Judge**