

Latest HLJ 2025 (HP)(1) 291

In the High Court of Himachal Pradesh, Shimla.

Cr. MP(M) No.2997 of 2024 Date of Decision:07.03.2025.

Coram: Hon'ble Mr. Justice Sushil Kukreja, Judge

Abhishek alias Mittu ...Petitioner

V/s

State of Himachal PradeshRespondents

Bharatiya Nagarik Suraksha Sanhita, 2023 Section-483 read with Sections 436, 380 & 457 of the Indian Penal Code, 1860 –Bail–Arson and theft from shop–Petitioner was found involved in the incident of setting on fire the shop of the complainant as well as theft of valuable articles–Prolonged custody of over three years and the trial has not commenced–Held–That, the continued incarceration without trial infringes upon the petitioner's fundamental rights–Bail granted. (Paras 7,8 and 11)

Cases referred:

Union of India vs. K.A. Najeeb, (2021) 3 SCC 713.
Mukesh Kumar vs. State of Rajasthan and another, 2023 SCC OnLine SC 2025.
Satender Kumar Antil vs. Central Bureau of Investigation & another, (2022) 10 SCC 51.
Siddharth vs. State of U.P. & Anr. [(2022) 1 SCC 676].

Parties represented by:

For the Petitioner: Mr. Umesh Kanwar, Advocate.

For the Respondents: Mr. Raj Negi & Mr. Nandeep Thakur.

Sushil Kukreja, Judge:- The instant bail application has been filed by the petitioner under Section 483 of the Bharatiya Nayarik Suraksha Sanhita, 2023 (for short, 'BNSS') for grant of bail in case FIR No.167 of 2021 dated 28.11.2021, under Sections 436, 380 & 457 of the Indian Penal Code (IPC), registered at Police Station Nagrota Bagwan, District Kangra, H.P.

2. Briefly stated the facts of the case, as per the status report filed by the respondent-State, are that on receipt of a telephonic information to the effect that a fire broke out in a shop at Main Bazar, New Bus Stand, Nagrota Bagwan, the police along with a team of RFSL visited the place of occurrence and collected scientific samples for analysis. Subsequently, during investigation of the case, the complainant, i.e. owner of the shop, disclosed to the police that an amount of Rs.10,000/- and a laptop, which were inside the shop, were also missing. After analysis of the

scientific samples, it was found that the shop was set ablaze by some unknown person, therefore, an FIR was registered under Section 436 IPC.

3. During the course of further investigation of the case, the police prepared the spot map, recorded statements of the witnesses and subsequently Sections 457 & 380 of IPC were also added in the FIR. Thereafter, Abhishek @ Mittu (petitioner herein) was arrested on 13.11.2021 in connection with FIR No.158 of 2021, dated 13.11.2021, registered under Section 436 IPC, who during interrogation, disclosed to the police that on the intervening night of 07/08.10.2021, he set the shop of Darshan Lal (complainant) on fire and had also stolen the laptop along with cash from his shop, hence, he was arrested in the instant case. He got recovered the laptop, which was stolen by him from the aforesaid shop. Subsequently, the police also procured CCTV footage obtained in FIR No.158 of 2021, in which, the presence of the petitioner was depicted on the place of occurrence and the said footage matched with him. The complainant produced two abstracts of building costs, as per which, he suffered the total loss to building due _____

4. The instant bail application has been filed by the petitioner on the ground that he is a student and has been falsely implicated in the present case. Learned counsel for the petitioner contended that the petitioner is in custody since 02.12.2021 and the trial is not going to be completed in near future as the evidence of the prosecution in the case is yet to start, therefore, no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, hence, he is entitled to be released on bail on the ground of delay of trial.

5. Conversely, the learned Deputy Advocate General has opposed the bail application on the ground that the petitioner is involved in a serious offence and keeping in view the gravity of the offence, he is not entitled to be released on bail. He further contended that if the petitioner is enlarged on bail, he will try to influence the witnesses and may also tamper with the prosecution evidence.

6. I have given my considered thought to the rival contentions raised and also gone through the police file as well as the status report filed by the prosecution. The allegation against the petitioner are that he was found involved in the incident of setting on fire the shop of the complainant as well as theft of valuable articles. The petitioner is behind the bars since 02.12.2021 and the trial has not yet commenced.

7. It is no longer res integra that Article 21 of the Constitution of India guarantees for speedy trial and an under trial prisoner cannot be detained in jail/custody for an indefinite period. In Union of India Versus K.A. Najeeb, (2021) 3 Supreme Court Cases 713, the Hon'ble Supreme Court observed that once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the Courts would ordinarily be obligated to enlarge them on bail. The relevant para of the judgment is reproduced as under:-

"15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In Supreme Court Legal Aid Committee (Representing Under trial Prisoners) v. Union of India, it was held that under trials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts

unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, Courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.”

8. In Mukesh Kumar versus State of Rajasthan and another, 2023 SCC OnLine SC 2025, the Hon'ble Supreme Court granted bail to the accused involved in the offences under Sections 143, 302, 307, 452, 323, 504 of the Indian Penal Code as he was suffering incarceration for more than 1 year and 11 months . Relevant paras of the judgment are reproduced as under:-

“8. Suffice to say that the petitioner has been in custody for more than 14 months, the crucial witnesses have since been examined and there is no likelihood of tampering with the evidence. Even otherwise also, the witnesses are close family members of both sides, hence there is no likelihood of winning over the witnesses.

9. Since conclusion of trial will take considerable time, we deem it appropriate to release the petitioner on bail accordingly.”

9. From the foregoing enunciation of the law laid down by the Supreme Court, it becomes clear that long incarceration of an under trial without any likelihood of conclusion of trial in near future infringes upon the right of speedy trial of such under trial.

10. ***In Satender Kumar Antil Versus Central Bureau of Investigation & another, (2022) 10 Supreme Court Cases 51***, after taking note of the decision given in ***Siddharth Vs. State of U.P. & Anr. [(2022) 1 SCC 676]***, it has been held by the Hon'ble Supreme Court that personal liberty is an important aspect of our constitutional mandate. The relevant portion of the judgement reads as under:-

“44. This Court in Sidharth v. State of U.P., has held that:-

.....10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self- esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.....”

11. In the case on hand, the trial in the case in hand has not commenced and the evidence of the prosecution is yet to start as such there is no likelihood of completion of the trial in near future. The petitioner has remained in custody since 02.12.2021 and has suffered incarceration

for more than three years and three months. His detention has virtually become pre-trial punishment to him. The petitioner cannot be detained in custody for an unlimited period with hardened criminals, especially when he is only 24 years of age. There is also nothing on record to suggest that the delay in trial is attributable to the petitioner. Further, the _____

12. Considering the overall facts and circumstances of the case, but without touching merits of the case, regard being had to the fact that the petitioner is in jail since 02.12.2021, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No.167 of 2021, dated 28.11.2021, registered at Police Station Nagrota Bagwan, District Kangra, H.P., under Sections under Sections 436, 380 & 457 of IPC, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs.50,000/- (Rupees fifty thousand) with one surety in the like amount to the satisfaction of learned trial Court. The bail order is, however, subject to the following conditions:-

- I. that the petitioner will appear before the Court and the Investigating Officer whenever required ;
- II. that he will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing any facts to the Court or the police;
- III. that he will not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorise them in any manner;
- IV. that he will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.
- V. that he will not leave India without prior permission of the Court.

13. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioner.

14. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

15. The Registry is directed to forward a soft copy of the bail order to the Superintendent, District Jail Dharamshala, District Kangra, H.P., through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

16. In case, the petitioner is not released within a period of seven days from the date of grant of bail, the Superintendent, District Jail, Dharamshala, HP is directed to inform this fact to the Secretary, DLSA, District Kangra, H.P. at Dharamshala. The Superintendent, District Jail, Dharamshala is further directed that if the petitioner fails to furnish the bail bonds, as per the order passed by this _____