

(2022) 01 SHI CK 0050

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 35 Of 2022

Gopal Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Indian Penal Code, 1860 — Section 307, 436
Code Of Criminal Procedure, 1973 — Section 154, 439
Evidence Act, 1872 — Section 27

Citation : (2022) 01 SHI CK 0050

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Gurinder Singh Parmar, Sumesh Raj, Narinder, Kunal Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. Petitioner is an accused in case FIR No. 173/2021, dated 28.11.2021, registered at Police Station Gagret, District Una, H.P., under Sections 436

and 307 of the Indian Penal Code.

2. Petitioner was arrested on 28.11.2021 and is in judicial custody since 29.11.2021.

3. Petitioner has approached this Court for grant of bail under Section 439 of the Code of Criminal Procedure in the above noted case, on the ground

that he has been falsely implicated and has committed no offence. The investigation of the case is complete and his prolonged custody shall serve no

purpose. Petitioner has undertaken to abide by all such terms and conditions as may be imposed against him.

4. On notice, the respondent has filed status report. It has been submitted that

on 28.11.2021, a telephonic information was received by the police that some temporary sheds were on fire near place Shivwadi. The police party reached the spot. The statement of complainant, Channo Devi, was recorded under Section 154 of Cr.P.C. She alleged, in her statement that she alongwith Soni Devi and Munna Dass were residing in temporary sheds constructed on the land of Om Prakash for the last about 5 years on payment of rent @ Rs.500/Â each. At about 1:30 AM., she noticed the petitioner putting her temporary sheds on fire with the help of a lighter. She called Soni Devi and petitioner ran away from the spot on noticing them. Within no time, all three temporary sheds were gutted in fire causing loss of household articles, six mobile phones and approximately Rs. 75,000/Â in cash. Petitioner had also quarrelled with them about a week earlier and had threatened that in case they did not leave the site he would put them on fire. On further investigation, police is alleged to have recovered a lighter on the basis of disclosure statement of the petitioner recorded under Section 27 of the Indian Evidence Act. The revenue record of the land in question has also been made part of the investigation record.

5. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

6. The motive being assigned to the petitioner for commission of alleged offence is that he is co-Owner of land alongwith Om Prakash, on which temporary sheds existed and the petitioner did not want the complainant and other persons to reside on the joint land. On perusal of police file, it is also revealed that some civil litigation is also going on between petitioner and Om Prakash in respect of land in question. The enmity can always be used as a double edged weapon. The motive as assigned to the petitioner for commission of offence as also the fact that the petitioner has committed the offence is yet to be proved.

7. The petitioner is in judicial custody since 28.11.2021. The investigation of the case is almost complete. Pre trial incarceration is neither required nor warranted in the facts of the instant case. The petitioner is permanent resident of Ward No. 2, Ram Nagar (Gagret), Tehsil Ghanari, District Una, H.P. and there is no likelihood of his absconding from the course of justice. No such apprehension has even been expressed by the respondent.

8. The petitioner is not alleged to have any criminal background or history. It has

not been alleged against the petitioner that he has a potential to influence the prosecution witnesses or to tamper with the prosecution evidence. It is also not the case of the respondent that the enlargement of the petitioner on bail shall prejudice the trial of the case, in any manner.

9. In the peculiar facts and circumstances of the case, the petition is allowed and the petitioner is ordered to be released on bail in case FIR No.

173/2021, dated 28.11.2021, registered at Police Station Gagret, District Una, H.P., under Sections 436 and 307 of the Indian Penal Code, on his

furnishing personal bond in the sum of Rs. 25,000/Â with one solvent surety in the like amount to the satisfaction of the learned Chief Judicial

Magistrate or any other Judicial Magistrate Ist Class, stationed at Una, District Una, H.P. This order shall, however, be subject to the following

conditions:Â?

i) Petitioner shall join the investigation as and when required and shall regularly attend the trial of the case, if any, before learned Trial Court and shall

not cause any delay in its conclusion.

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of this Court till conclusion of investigation and thereafter of learned trial Court till completion of trial, if any.

10. Any expression of opinion hereinÂabove shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.