

(2024) 01 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : CR.MPM No. 3203 Of 2023

Jai Chand Thakur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-01-2024

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 12, 13(1)(a), 13(2)
Indian Penal Code, 1860 — Section 120B, 406, 409, 420
Code Of Criminal Procedure, 1973 — Section 164
Evidence Act, 1872 — Section 25

Citation : (2024) 01 SHI CK 0048

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Abhimanyu Rathore, Jitender Sharma, Ajit Singh

Final Decision : Disposed Of

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition seeking bail in FIR No.05/2023 dated 05.06.2023 for the commission of offences punishable under Sections 12 and 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 406, 409, and 420 read with Section 120B of IPC at Police Station Hamirpur, District Hamirpur, H.P.
2. Initially, the present application was filed for seeking the pre-arrest bail, however before the application could be taken up, the petitioner was arrested and it was treated as a regular bail petition with the consent of the parties.
3. It is asserted that the petitioner is a permanent resident of Village Brayali, Post Office Darlaghat, Tehsil Arki, District Solan, H.P. He has been working as a Driver with H.P. Staff Selection Commission, Hamipur, since 11.06.2019. The petitioner was selected after fulfilling all the eligibility criteria as per the law. The petitioner was earlier interrogated in FIR No.4 of 2022 dated 23.12.2022 for the

commission of offences punishable under Section 7 of the Prevention of Corruption Act 1988 and Section 420 & 120B of IPC. The police were compelling the petitioner to become an approver or a prosecution witness to substantiate the prosecution case. He filed a pre-arrest bail application before this Court which was dismissed as the petitioner was not an accused. The police registered another FIR No.5 of 2023 on 05.06.2023 against the petitioner. The petitioner is innocent and he was wrongly arrayed by the police as an accused. He had joined the investigation as per the direction of the police. The petitioner would join the investigation and shall abide by all the terms and conditions, which may be imposed by the Court. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

4. A status report was filed asserting that the Himachal Pradesh Staff Selection Commission, Hamirpur issued a notification for filling 1756 posts of Junior Office Assistants in various departments on 31.12.2020. The objective-type screening test was held on 21.03.2021. The result was declared on 01.07.2021. 19024 candidates were provisionally shortlisted. Out of them, 4342 candidates were shortlisted for document verification. The police found based on the call details record that 79 suspected candidates had talked to the officers/officials of HP Staff Selection Commission, Hamirpur or the touts. The details of 23 candidates were ascertained. It was found that peon Kishori Lal had taken the questions and answers from Uma Azad and handed them over to his daughters Vandana Kumari and Pooja Sharma. Both of them secured good marks. Kishori Lal returned this diary to Uma Azad on 3rd day. Kishori Lal had also not given a No Blood Relation Certificate regarding this examination. It was also found that Uma Azad had handed over a diary to Madan Lal, Superintendent posted in the HP Staff Selection Commission and told him that it contained the questions and answers of the test of JOA (IT)817. Madan Lal had also handed over this diary to his daughter Kritika Chaudhary. Kritika and Kanishka had also secured good marks. The present petitioner had also appeared as a candidate. He had also read the diary one weeks before the examination. He had secured 65 marks in the exam. The questions and answers were written by Uma Azad and Jai Chand knows the handwriting of Uma Azad. Suman Lata made a statement recorded under Section 164 Cr.P.C. that she had undertaken a course of steno-typist in the institution of Sanjeev Kumar. Sanjeev Kumar called her one day on WhatsApp and told her to arrange ₹ 3-4 lakhs and he would make the paper available to her. Sanjeev Kumar also said that he had similarly passed the paper. Former Secretary Jatinder Kanwar was the custodian of the papers. Uma Azad was posted in the Secrecy Branch and had written the questions and answers in the diary. The police registered the FIR and conducted the investigation. The petitioner was interrogated and he revealed that he was posted as a Driver with Jatinder Kanwar. He was posted in August 2022 in Secrecy Branch, where he had worked as an Assistant. Uma Azad was posted as Senior Assistant. The petitioner had applied for the post of Traffic Inspector, Hostel Warden JOA (IT), however, he had only passed the examination of JOA (IT). Uma Azad had helped him because the

petitioner used to drop her at her home late in the night. He had read the diary three-four times and had secured 66.50 marks. The OMR sheet of the petitioner was sent to FSL, Junga for analysis and a report was issued. The petitioner was arrested. His specimen signatures were obtained. He has also disclosed the place, where the diary was given to him. The petitioner is in judicial custody till 03.01.2024. The petitioner had appeared for the examination after going through the handwritten diary of Uma Rani alias Uma Azad. The petitioner can influence the prosecution witnesses; hence, the status report.

5. I have heard Mr. Abhimanyu Rathore, learned counsel for the petitioner and Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State.

6. Mr. Abhimanyu Rathore, learned counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. He was a driver posted in the HP Staff Selection Commission and had appeared as a candidate. There is no evidence against the petitioner except his statement stated to have been made to the police, which is inadmissible under Section 25 of the Indian Evidence Act. Therefore, he prayed that the present petition be allowed and petitioner be released on bail

7. Mr. Jitender Sharma, learned Additional Advocate General, for the respondent/State submitted that there were many irregularities in the examination conducted by the H.P. Staff Selection Commission. The petitioner had taken advantage of the fact that Uma Azad had access to the questions. He went through the questions and answers and passed the paper. This act of the petitioner had denied the legitimate candidates a fair chance. Therefore, he prayed that the present petition be dismissed.

8. I have given considerable thought to the submissions at the bar and have gone through the records carefully.

9. The Hon'ble Supreme Court discussed the parameters for granting the bail in *Bhagwan Singh v. Dilip Kumar*, 2023 SCC OnLine SC 1059 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 have 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 Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and Puran v. Rambilas [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)"

10. 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 Govind Upadhyay 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.'

11. The prosecution has relied upon the statement made by the petitioner to the police. Such a statement is inadmissible in view of Section 25 of the Indian Evidence Act. There is no independent evidence of the fact that the petitioner had access to the diary containing the questions and answers of the examination.

12. Reliance was also placed upon the fact that the petitioner had shown the place, where the diary was shown to him, however, this statement did not lead to the discovery of any fact, and its admissibility is doubtful.

13. The prosecution has also relied upon the report of FSL but it only shows the obliteration of some answers and the same does not help the prosecution.

14. Keeping in view the fact that the petitioner had not circulated the questions, the pre-trial incarceration of the petitioner is not justified especially in the absence of any legally admissible evidence; hence, the petitioner deserves to be released on bail.

15. The police have not stated that the petitioner has any criminal antecedents, hence, there is no impediment in releasing the petitioner on bail.

16. The petitioner claimed that he is a permanent resident of Tehsil Arki, District Solan. This was not stated to be incorrect in the status report filed by the State. This means that the petitioner has roots in the society and his chance of absconding is quite less.

17. In view of the above, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing bail bonds in the sum of ₹ 50,000/- with one surety in the like amount, to the satisfaction of the learned Trial Court.

While on bail, the petitioner will abide by the following conditions:

- (i) The petitioner will attend the trial on each and every date of hearing and if he

is unable to do so, he will seek an exemption from the Court by filing an appropriate application,

(ii) The petitioner will not intimidate the witnesses nor will he influence any evidence in any manner whatsoever,

(iii) The petitioner shall not seek unnecessary adjournments and do any other act to hamper the progress of the trial.

(iv) The petitioner will not leave the present address for a continuous period of seven days without furnishing the address of the intended visit to the concerned Police Station and the Court.

(v) The petitioner will furnish his mobile number, and social media contact to the Police and the Court and will abide by the summons/notices received from the Police/Court through SMS/WhatsApp/Social Media Account. In case of any change in the mobile number or social media accounts, the same will be intimated to the Police/Court within five days from the date of the change.

18. 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.

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

20. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, Sub Jail, Hamirpur and the learned Trial Court by FASTER.

21. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioner and in case, said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, same may be ascertained from the official website of this Court.