

(2024) 03 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 192 Of 2024

Jai Chand Thakur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-03-2024

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 12, 13(1)(a), 13(2)
Indian Penal Code, 1860 — Section 120B, 409, 420
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2024) 03 SHI CK 0004

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Abhimanyu Rathor, Jitender Sharma

Final Decision : Disposed Of

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for seeking pre-arrest bail. It has been asserted that F.I.R. No. 11 of 2023 dated 28.07.2023 was registered against the petitioner for the commission of offences punishable under Sections 12, 13(1)(a) read with Section 13(2) of the Prevention of Corruption (P.C.) Act and Sections 420, 409 & 120-B of Indian Penal Code(IPC) at Police Station Hamirpur, H.P. The petitioner was employed as a driver with the H.P.Staff Selection Commission Hamirpur, H.P. since 11.06.2019. The police asked him to become an approver to substantiate the prosecution case; however, the petitioner did not do so. Hence, he was involved in various F.I.Rs. The petitioner joined the investigation as and when called upon to do so. The petitioner would abide by all terms and conditions, which may be imposed by the Court. Hence, the present petition.

2 The police filed a status report asserting that an F.I.R. was lodged against the petitioner and other persons regarding the paper leak. The H.P.Staff Selection Commission, Hamirpur, H.P. (HPSSC), issued an advertisement regarding 82

posts of JOA(IT) on a contract basis. The test was conducted on 19.12.2021. 695 candidates qualified the typing test. Uma Rani @ Uma Azad was appointed to conduct the screening test. She was to furnish no relation certificate but she failed to do so. Her close relative Shivani appeared in the examination. Uma Rani disclosed the question paper to Shivani. The selection of Rama Devi is suspicious because she is the sister of the petitioner, who is employed as a driver. The petitioner was in touch with Uma Rani. Jinender Kumar, the then Secretary, HPSCC had not maintained the secrecy of the question paper, which resulted in the leakage and benefit to Shivani and Rama Devi. The police registered the F.I.R. and conducted the investigation. The police found that Shivani had attempted 156 questions and left 14 questions un-attempted. She secured 60 marks out of 85. Rama Devi secured 64.5 marks out of 85 marks. The Mobile of Ms Shivani was seized and has been sent to FSL Junga for retrieval of its data. Uma Rani had furnished no relation certificate with mala fide intention. The sister of the petitioner also appeared in the examination and had secured the 4th position. She had produced a non-functioning mobile phone to deceive the police. The petitioner is to be interrogated. Therefore, it was prayed that the present petition be dismissed.

3. I have heard Mr. Abhimanyu Rathor, learned counsel for the petitioner and Mr. Jitender Sharma, learned Additional Advocate General for the respondent.

4. Mr. Abhimanyu Rathor, learned counsel for the petitioner submitted that there is no prima facie evidence against the petitioner to connect him with the commission of crime. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Mr. Jitender Sharma, learned Additional Advocate General for the respondent submitted that the petitioner is employed as a driver in HPSCC. His sister appeared in the examination and she secured 4th position. This clearly shows that she knew about the question paper. The investigation is at the initial stage; therefore, he prayed that the present petition be dismissed.

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

7. It was laid down by the Hon'ble Supreme Court in P. Chidambaram vs. Directorate of Enforcement 2019 (9) SCC 24 that the power of pre-arrest is extraordinary and should be exercised sparingly. It was observed:

"67. Ordinarily, an arrest is a part of the procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory

bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail.

Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

8. The status report does not show that the petitioner had access to the leaked question paper. The police found that Uma Rani was aware of the questions, which she had disclosed to Shivani. The police are relying upon the conversation between petitioner and the Uma Rani but the same will not help the police because the petitioner was employed as a driver in HPSSC where Uma Rani was also employed. Therefore, a conversation between two colleagues employed in the same office will not show that the petitioner had access to the question paper.

9. The police have stated that the sister of the petitioner has secured the 4th position, which shows that she had access to the question paper. Merely because the petitioner’s sister appeared in the examination and secured the 4th position cannot lead to any such inference in the absence of any record of the previous attempts to show that she could not have secured the 4th position. Therefore, the status report does not show the prima facie involvement of the petitioner. The petitioner asserted that he had co-operated with the police and he was regularly appearing.

This is not stated to be incorrect. It is stated that the petitioner is not disclosing correct facts as to how he had accessed the question paper. In the absence of any evidence that the petitioner had accessed the question paper, the petitioner cannot be compelled to be a witness against himself by saying that he had accessed the question paper.

10. Keeping in view the status report, the order dated 12.02.2024 is made absolute. The petition stands disposed of.

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