

(2014) 03 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal MP (M) No. 228 of 2014

Lakhjeet Singh

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Penal Code, 1860 (IPC) — Section 403 411

Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2014) 03 SHI CK 0003

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : N.K. Thakur and Ms. Ishita Bhandari, for the Appellant; Virender Kumar Verma, Ms. Meenakshi Sharma, Addl. AGs, Mr. Tarun Pathak and Parul Negi, Dy. AGs and Mr. Randhir Singh, Inspector/I.O. Police Station, SV and ACB, Dharamshala, Distt. Kangra, HP., for the Respondent

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.—These petitions have been preferred by the petitioners, u/s 438 Cr.P.C., for issuing direction to the police of Police Station (Vigilance), Kangra at Dharamshala to release the petitioners on bail in FIR No. 2 of 2014 dated 17.2.2014, registered u/s 403, 411 IPC and section 13(2) of Prevention of Corruption Act. The prosecution story in brief is that while police party was on patrol duty on 17.2.2014, then at about 12.15 p.m., they received a secret message that one Karam Deen was constructing his residential house and was using government cement in the construction thereof and in case the premises are raided at once, the cement bags can be seized. Since the courts are situated at a distance, this would delay the process of procuring the warrants. Therefore, raiding party was constituted by associating the Uppardhan Suresh Kumar and one Pardeep Singh, Ward Panch Gram Panchayat, Badarpur and when the raid was conducted, it was found 160 bags of cement with the stamp "not for sale H.P. Govt." were recovered. These bags were handed over to Junior Engineer

of Sub Division, Sansarpur Tarace on sapurdari.

2. So far as aforesaid Karam Deen accused is concerned, he was ordered to be released by learned Sessions Judge, Kangra at Dharamashala vide order dated 4.3.2014. On the basis of the investigation, it was revealed that cement of government supply had been released to the bail petitioner Varinder Singh, who is a government contractor while the other bail petitioner Lakhjeet Singh is working as driver. It has been stated by the prosecution that matter is still pending investigation, as this cement which was meant for Shah Nahar project has been illegally sold in open market by petitioner Varinder Singh through his driver Lakhjeet Singh. It has been alleged that without custodial interrogation, the bail petitioners would not disclose the truth.

3. I have heard the learned counsel for the parties. Mr. Verma, learned Additional Advocate General has vehemently argued that both the petitioners are guilty of committing a serious offence by selling the cement meant for government supply in the open market and that too by playing fraud on the public. He further contends that since these petitioners are working contrary to the public interest, they ought not to be released on bail. Sh. Naresh Thakur, learned Senior Advocate assisted by Ms. Ishita Bhandari, Advocate, has on the other hand argued that veracity of allegations can only be established during the course of the trial and at this pre-trial stage, the petitioners should not be ordered to be kept in custody particularly when the case itself is based on documentary evidence.

4. I have gone through the record of the investigation. It is the case of the prosecution that co-accused Karam Deen has already been ordered to be released on bail, the allegations against the said accused are in no manner different from the accusation against the present petitioners. That apart, the entire evidenced is based on documentary evidence, which otherwise is either in the custody of the police or in the custody of government/public departments, to which ordinarily the accused may not have any access. Merely because the prosecution claims that they require the custody of the petitioners for further interrogation cannot be a ground to deny bail to the petitioners. Both the petitioners have already joined the investigation pursuant to directions issued by this court on 6.3.2014 and thereafter on 14.3.2014. I am convinced that no case is made out for custodial interrogation against the petitioners, who are already on bail pursuant to orders passed by this court on 6.3.2014.

5. Taking into consideration the entire gamut of facts and circumstances, I feel that this is a fit case where petitioners ought to be released on bail. Accordingly, both the petitions are allowed and petitioners are ordered to be released on bail in FIR No. 2 of 2014 dated 17.2.2014, registered at Police Station (Vigilance) Kangra at Dharamashala, u/s 403, 411 IPC and section 13(2) of Prevention of Corruption Act, on their furnishing personal bond in the sum of Rs. 25,000/- each with one surety each of the like amount to the satisfaction of any Judicial Magistrate stationed at Nurpur, District Kangra. It is clarified that petitioners shall

fully cooperate with the investigation, will not tamper with the prosecution evidence, 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 such facts to the court or to any police officer; they shall make themselves available during trial. The learned Judicial Magistrate is directed to comply with the directions issued by the High Court vide letter No. HHC.VIG/Misc. Instructions/93-IV-7139 dated 18.3.2013. Any observation made hereinabove 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. The petitions stand disposed of.

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