

(2022) 04 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 413 Of 2022

Manoj Kumar

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 20-04-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 439
Indian Penal Code, 1860 — Section 120B, 420

Citation : (2022) 04 SHI CK 0038

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Prem Prakash Chauhan, Hemant Vaid

Final Decision : Dismissed

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court, under Section 439 of Criminal Procedure Code, seeking regular bail in case FIR No. 203 of 2020, dated 7.8.2020, registered in Police Station Baddi, District Solan, H.P., under Sections 408 and 120-B of Indian Penal Code (IPC in short).

2. Status report stands filed. Record was also made available.

3. Prosecution case in brief is that petitioner was employed as an Accountant in Natural Selection Company (hereinafter referred to as the Company) w.e.f 1.3.2019. During his employment, he diverted about Rs.25 lacs of the Company to his account and, cheated the Company. Out of that amount, Rs.3,75,000/- were credited by him in the account of his wife. On the basis of complaint made to this effect by partner of Natural Selection Company, FIR was registered and the record was collected from the Axis Bank and HDFC Bank where from it was substantiated from account of the Company that Rs.3,75,700/- were credited in the account of Karishma, wife of accused. She was interrogated and she had returned Rs.3,75,700/- during investigation.

4. As per case of prosecution, after registration of FIR, petitioner eloped and was not traceable despite efforts made by the Investigating Officer/Police. In the meanwhile, wife of the petitioner applied for anticipatory bail on 14.8.2020, invoking Section 438 of Cr.P.C and she was enlarged on bail on 8.10.2020 by the learned Sessions Court. Despite that, petitioner neither applied for bail nor surrendered before the police for joining investigation. Ultimately with great efforts, he was traced by ascertaining his location through the mobile being used by him and was arrested by the police in area Lawrance Road, Rampura, Delhi on 19.11.2021. He remained in Police custody for three days. Thereafter, he was sent in judicial custody and since then he is in judicial custody. During investigation, he disclosed transfer of amount from Company to his accounts being maintained by him in Oriental Bank, HDFC Bank and Axis Bank and also admitted transfer of Rs.3,75,700/- in the account of his wife Karishma maintained in Punjab National Bank. He has further disclosed that some of the amount so transferred was utilized by him in payment of loan of his vehicle and rest was spent and now there was no money in his account. Car of the petitioner has been taken in possession. As per status report, cheating of Rs.15,42,022/- has been substantiated from the evidence collected by the Investigating Agency and out of which only Rs.3,75,700/- have been recovered. Challan has been presented in the Court of Judicial Magistrate First Class, Nalagarh on 30.11.2021.

5. Learned counsel for the petitioner submits that challan has been presented in the Court and investigation is complete and keeping in view the basic principle of Criminal Law that 'bail is rule and jail is exception', during pendency of the trial, petitioner deserves to be enlarged on bail. It has been stated in the petition that petitioner is an innocent person, who belongs to well reputed family of the area and has a good landed property and by arresting him he has been deprived of his valuable Fundamental Right of liberty by abuse of legal provisions and process of law by the complainant to take vengeance, and as investigation is complete, no fruitful purpose is going to be served by keeping petitioner in judicial custody any further.

6. Learned Additional Advocate General has submitted that keeping in view the conduct of the petitioner, he does not deserves to be enlarged on bail and his previous conduct is sufficient to suspect that on getting bail, there is possibility of petitioner fleeing from justice as he was not traceable for about one year three months after registration of FIR and it was not a case that petitioner was unaware about registration of FIR as his wife had applied for bail in August, 2020 and was enlarged on bail on 8.10.2020, and petitioner has no explanation for his non-availability for more than one year as after registration of FIR his wife was interrogated and she had returned Rs.3,75,700/-. It has been further argued that bail petition of the petitioner has been rejected by the learned Additional Sessions Judge, Nalagarh vide order dated 7.2.2022 and there is no changed circumstance thereafter, warranting interference of this Court for granting of bail to the petitioner and thus release of the petitioner on bail at this stage shall have adverse impact on the society.

7. Considering the entire facts and circumstances placed before me and taking note of the fact that petitioner could be traced and arrested after about 15 months after registration of FIR despite the fact that his wife was enlarged on bail in October, 2020 and also impact of releasing the petitioner, at this stage, on the society and also considering factors and parameters required to be considered at the time of considering bail application as propounded in various pronouncements of the Supreme Court as well as this Court, I find that at this stage petitioner does not deserve to be enlarged on bail.

Accordingly, petition is dismissed.