

(2021) 02 SHI CK 0183

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 150 Of 2021

Mohit Rana

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-02-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437, 437A, 446, 446A

Citation : (2021) 02 SHI CK 0183

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Lovneesh Kanwar, Sudhir Bhatnagar, Seema Sharma, Narender Singh Thakur, Manoj Bagga

Final Decision : ?Allowed

Judgement

Anoop Chitkara, J

1. The petitioner, who is in Judicial Custody since 11th January, 2020, on being arrested on the allegations of concealing blank marks sheets of Manav

Bharti University, with its wholly-solly, Shri Raj Kumar Rana, has come up before this Court seeking regular bail.

2. Earlier, the petitioner had filed a petition under Section 437 CrPC before the learned Additional Chief Judicial Magistrate, Solan, District Solan,

H.P.. on 19.01.2021, which was registered as Case No.2-22 of 2021. However, vide order dated 23.01.2021, the learned ACJM, Solan, District Solan,

H.P., dismissed the petition.

3. The bail petition is silent about criminal history, however, Mr. Lovneesh Kanwar, learned counsel for the bail petitioner states on instructions that

the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed

was more than three years. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on the complaint of Himachal Pradesh Private Education Institutions Regulatory Commission,

the police registered the FIR, which led to detection of a large number of fake marks sheets issued by Manav Bharti University. After arresting the

main accused, he was interrogated, based on which, the Investigator got to know about the involvement of the petitioner. The allegations against the

petitioner are that he had concealed blank marks sheets, which were sent by Raj Kumar Rana, on coming to know about police investigation. Based

on these allegations, the Police registered the FIR mentioned above.

5. Learned Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to

very stringent conditions.

7. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can

be taken care of by imposing elaborate and stringent conditions. In *Sushila Aggarwal*, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that

unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

8. The main accused, Raj Kumar Rana, stands released on bail. One Sudha Pandey, who was also arraigned as an accused, on the similar allegations,

also got anticipatory bail on the ground that initially allegations were attributed against her, but subsequently, those were water-downed. The petitioner

was, thus, almost similarly placed as was the aforesaid Sudha Pandey. Given the fact that the petitioner is already in Judicial Custody from 11th

January, 2020, no further incarceration is justified. Another reason for granting bail is that in para-4 of the bail petition, it is pleaded that on coming to

know about the misdeeds of Raj Kumar Rana, the petitioner had resigned from Madhav University of Rajasthan.

9. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. Without

commenting on the merits of the case, the stage of the investigation and the

period of incarceration already undergone would make out a case for bail.

10. In the facts and circumstances peculiar to this case, the petitioner makes out a case for release on bail.

11. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and

irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

12. In *Manish Lal Shrivastava v State of Himachal Pradesh*, CrMPM No.1734 of 2020, after analysing judicial precedents, this Court observed that

any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to

switch over to another.

13. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rupees Twenty-Five Thousand

(INR 25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Judicial Magistrate having the jurisdiction over the Police

Station conducting the investigation, and in case of non-availability, any Ilqa Magistrate. Before accepting the sureties, the concerned Magistrate

must satisfy that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind

the Jurisprudence behind the sureties, which is to secure the presence of the accused.

14. In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rupees Twenty-Five Thousand only (INR 25,000/-),

made in favour of ""Chief Judicial Magistrate, District Solan, H.P.,

a) Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g.,

HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the

linked account.

b) Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.

c) If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.

d) If made online, then its printout, attested by any Advocate, and if possible,

countersigned by the accused, shall be filed, and the depositor shall get the online liquidation disabled.

e) The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.

f) After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.

g) It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa.

h) Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be.

15. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police

officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

d) The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail.

Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall

not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of

summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any).

[Honâ??ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.

iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the

petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to

achieve the purpose.

16. In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the

principal amount without interest) that the Government(s) might incur to produce him before such Court, provided such amount exceeds the amount

recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse

shall entitle the trial Court to order the transfer of money from the petitioner's bank account(s). However, this recovery is subject to the condition that

the expenditure incurred must be spent to trace the petitioner alone, and it relates to the exercise undertaken solely to arrest the petitioner in that FIR,

and that voyage was not for any other purpose/function what so ever.

17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of

this bail order, in vernacular and if not feasible, in Hindi.

18. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for

modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking

cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

19. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

20. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

21. In return for the protection from further incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

22. There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner can download this order along with

the case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer or the Court wants to verify the

authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

The petition stands allowed in the terms mentioned above.

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