

(2020) 05 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 510, 511, 512 Of 2020

Narender Yadav And Ors

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Information Technology Act, 2000 — Section 66(D)
Indian Penal Code, 1860 — Section 34, 420

Citation : (2020) 05 SHI CK 0014

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Abhilasha Kaundal, Somesh Raj, Dinesh Thakur,
Sanjeev Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of these three petitions filed under Section 439 of the Code of Criminal Procedure, the petitioners have prayed for grant of regular bail in FIR No. 143 of 2019, dated 06.11.2019, registered under Section 420 read with Section 34 of the Indian Penal Code and Section 66(D) of the Information Technology Act at Police Station Dharampur, District Solan, H.P.

2. The petitioners are stated to be in custody since 08.02.2020. The allegation against the petitioners is that complainant Dr. Jai Prakash Bhatiya responded to an advertisement for the sale of a Car bearing registration No. HP-12H-8859, posted by one Shri Madan Lal, son of Shri Santokha, resident of Village and Post Office Kundlu, Tehsil Nalagarh, District Solan, H.P. on his Facebook. Complainant contacted said Madan Lal on his mobile number and agreed to purchase the Car in issue subject to fulfillment of formalities, like test drive and finalization of price. Requisite documents were sent by the complainant through WhatsApp to complete the formalities of the sale of the Car. According to the complainant,

Madan Lal demanded a sum of Rs.10,500/- for documentation of the vehicle, which payment was made through Net-banking into relevant PAYTM account in two installments. Later on, the complainant received a phone call from delivery boy Vikash, who demanded a sum of Rs.31,550/- for clearance of the vehicle from Panchkula. This amount was paid in three installments by the complainant. As per the complainant, thereafter again a demand was raised for an amount of Rs.29,500/- for the payment of GST, which was followed by a demand of Rs.27,750/-. Complainant told the delivery boy that the balance amount shall be paid only after the Car was delivered. As complainant did not make the last payment of Rs.27,750/-, the delivery boy stopped talking with him and even did not reply to his WhatsApp messages. On this, complainant suspected a foul play and accordingly, he lodged a complaint with the Police, which was registered as FIR No. 143/2019. After lodging of said FIR, the matter was investigated by the Police and as per the prosecution, the investigation has revealed that the petitioners were involved in this entire crime, whereby purportedly, a fraud was played by them upon the complainant in the guise of selling him a vehicle through advertisement on OLX, thus alluring the complainant to deposit a substantive amount in their PAYTM accounts. It is further the case of the prosecution that the PAYTM account and ATM are maintained by accused petitioner Vishnu Kumar, who keeps the entire transaction and thereafter the money is got distributed between all the petitioners.

3. Learned Senior Counsel appearing for the petitioner submits that the petitioners are 19 years young boys. They are not guilty of the offences alleged against them. They are behind bars since 08.02.2020. No recovery is to be effected from them and at present, no fruitful purpose will be solved by keeping them behind bars. He has further argued that even otherwise, taking into consideration the fact that the maximum punishment, as is envisaged under Section 420 of the Indian Penal Code, is seven years and as the challan has not been filed within the statutory period of 60 days, the petitioners are entitled for bail automatically. Mr. Bhushan further submitted that in case of grant of bail, the petitioners undertake to furnish the requisite securities and they also undertake to abide by all the terms and conditions which may be imposed upon them by this Court.

4. On the other hand, learned Additional Advocate General has argued that the offences alleged against the petitioners are serious, as they have indulged in Cyber Crime, which has become the norm of the day and persons involved in such like crimes need no sympathy. He has further argued that though it is not in dispute that the petitioners are 19 years old boys, however, fact of the matter remains that it is not as if they have committed the offences in issue for the first time, because investigation has revealed that previously also they have indulged in similar Cyber Crimes. He further argued that as the petitioners belong to the State of Rajasthan, in the event of grant of bail, there is each and every possibility that they may jump the bail and may not present themselves to face the trial. Learned Additional Advocate General has also argued that as two

primary witnesses are from the villages of the accused, there is a possibility that the petitioners would make an endeavour to win over the said witnesses to throttle the trial.

5. I have heard learned counsel for the parties and have also gone through the status report, which has been filed by the State.

6. Though opportunity was granted to the State, however, till date, the State has not been able to substantiate its contention that the petitioners are habitual offenders and they have indulged in similar offences, leading to registration of FIRs. The alleged offences, indeed, are grievous, as Cyber Crimes are rising these days, however, fact of the matter remains that whether or not the petitioners are guilty of the offences alleged against them, is a matter of trial and it is for the Trial Court to decide the said issue, depending upon the evidence, which shall be placed on record by the parties concerned. The petitioners are 19 years old boys, who belong to the State of Rajasthan. They are in custody since 08.02.2020 and are presently in judicial custody. Taking into consideration the factum of FIR having been registered under Section 420 read with Section 34 of the Indian Penal Code and Section 66(D) of the IT Act and petitioners are in judicial custody, in my considered view, no purpose will be served by keeping the petitioners in custody and it will be in the interest of justice to release them on bail by imposing stringent conditions, so that the apprehension of the State can be taken care of that the petitioners may not misuse the bail.

7. Accordingly, these petitions are allowed and the petitioners are ordered to be released on bail, on each of them furnishing a personal bond to the tune of rupees One Lac with two sureties each of the same amount in the case of each of the petitioners. This will be to the satisfaction of learned Chief Judicial Magistrate, Solan.

8. At this state, learned Additional Advocate General has stated that the petitioners may also be directed to report at the Local Police Stations of their respective villages in the State of Rajasthan on the first date of each of the month. Learned Senior Counsel for the petitioners submits that the petitioners are not averse to the same. Accordingly, it is ordered that the petitioners shall appear before the Station House Officer of the respective Police Stations of their villages and give their presence.

9. In addition, the grant of bail is subject to the following conditions:

"(a) Petitioners shall attend the trial on each and every date of hearing;

(b) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) They shall not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer;

(d) In the event of the petitioners indulging in winning the witnesses over or thwarting the course of justice by virtue of grant of bail in their favour, the State shall be at liberty to approach this Court for cancellation of the bail granted to the petitioners."

10. For the purpose of furnishing of bail bonds, in case any requisite permits are required by the concerned sureties, then the Authorities shall deal with the request so made by persons who are to furnish sureties in this regard in consonance with the protocol prevailing in the area concerned on account of COVID-19 pandemic.

Petitions stand disposed of accordingly, so also pending miscellaneous applications, if any.