

(2023) 05 SHI CK 0210

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1033 Of 2023

Ram Paul

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 30-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 415, 467, 471, 420
Code Of Criminal Procedure, 1973 — Section 156(3), 161

Citation : (2023) 05 SHI CK 0210

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Vishwa Bhushan, Mohinder Zharaick

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. The petitioner has prayed for grant of pre-arrest bail in case FIR No. 29 of 2023 dated 26.4.2023, under Section 420, 120B, 467, 471, 415 and 34 of IPC, registered at Police Station, Darlaghat, District Solan, H.P.
2. Petitioner was admitted to interim bail on 28.4.2023 and thereafter, he has joined the investigation as per requirement of investigation officer.
3. The allegation against the petitioner is that while working as Assistant Manager, in JCC Bank, Sewda, District Solan in the year 2010, he in collusion with one Sh. Naresh Kumar forged documents in the name of complainant and after sanctioning a loan of Rs. 2,00,000/-misappropriated such amount. It is further alleged that the complainant came to know about the commission of such offence only on 27.1.2023, when he received a notice of recovery from the bank.
4. Petitioner has prayed for grant of pre-arrest bail on the ground that he is innocent and has not committed any offence. His specific case is that the loan was sanctioned at the instance of the petitioner and his father, who had executed

a power of attorney in favour of complainant. He has further submitted that the power of attorney was duly executed and the petitioner had no reason to disbelieve the same. It is also contended that there is no malafide on behalf of the petitioner. Petitioner is stated to be permanent resident of VPO Deslehra, Tehsil Jhandutta, District Bilaspur, H.P. Petitioner has undertaken to abide by all the terms and conditions as may be imposed.

5. Respondent-State has filed the status report. The record of investigation carried so far has also been produced. The prayer of the petitioner for pre-arrest bail is opposed on the ground that the investigation is at initial stage and the grant of bail to petitioner at this stage may affect the investigation.

6. I have heard the learned counsel for the parties and have also gone through the record carefully.

7. The investigation record reveals that the FIR was registered on the basis of order passed by learned Judicial Magistrate, 1st Class, Arki, under Section 156 (3) of the Cr.P.C. After registration of case, police recorded statement of complainant under Section 161 Cr.P.C. In his statement before police, the complainant has stated that in the year 2010, he was taken to the office of Tehsildar, Arki by his cousin named Yogesh Kumar. On reaching the office of Tehsildar Arki, the complainant found his father Sh. Ram Singh to be present there. Some documents were prepared. Now he apprehends that his cousin and the petitioner had connived together by misusing the documents prepared on 4.2.2010 and had sanctioned and disbursed the loan in the name of complainant.

7. The version given by the complainant to police reveals that some document was prepared on 4.2.2010 in the office of Tehsildar and the father of the complainant was also present. Though, the complainant has not mentioned his exact age as on 4.2.2010, however, he has stated that he was a student of 10+1.

8. Keeping in view the facts, which have been discovered by the police during investigation, the version given by the petitioner also gets prima-facie support. The investigation record further reveals that till date, the writings and signatures of questioned documents have not been verified.

9. It is not the case of respondent-State that the petitioner is required by the police for custodial interrogation. The allegations against the petitioner are subject to proof. Even otherwise, no case for custodial interrogation is made out. The case is based on documentary evidence, which can be collected by police in absence of petitioner. It is also not the case that petitioner is custodian of the documents required for proving the allegations against him.

10. Petitioner is permanent resident of permanent resident of VPO Deslehra, Tehsil Jhandutta, District Bilaspur, H.P. He has no criminal antecedent. There is no likelihood of petitioner absconding or fleeing from the course of justice. In my considered view, the interest of justice shall be served by directing the petitioner to join the investigation as and when required.

11. Keeping in view the peculiar facts and circumstances of the case, petition is allowed. Order dated 28.4.2023 is confirmed and shall remain in force till the completion of trial, if any. However, the respondent shall be at liberty to move this Court for modification/vacation of this order in accordance with law. This order shall be subject to following conditions: -

i) That the petitioner shall make himself available for investigation by the Investigating Officer as and when required;

ii) the petitioner shall 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;

ii) That breach of any of the bail condition by the petitioner shall entail cancellation of the bail.

iii) That the petitioner shall not leave India without prior permission of the Court.

12. Any observation made herein above 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 herein above.