**(2020) 12 SHI CK 0021**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition (M) No. 2003, 2004 Of 2020

Shadi Lal And Others — APPELLANT

Vs

State Of Himachal Pradesh — RESPONDENT

**Date of Decision :** 03-12-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471, 477A

**Citation :** (2020) 12 SHI CK 0021

**Hon'ble Judges :** Vivek Singh Thakur, J

**Bench :** Single Bench

**Advocate :** Sunita Sharma, Dhananjay Sharma, Raju Ram Rahi

**Final Decision :** Disposed Of

## Judgement

Vivek Singh Thakur, J

1. Petitioners have approached this Court for bail under Section 438 Criminal Procedure Code (in short Cr.P.C.), in case FIR No.5 of 2020 dated

03.11.2020, registered in Police Station SV & ACB, Bilaspur, H.P., under Sections 420, 409, 467, 468, 471 and 477A read with Section 120B of the

Indian Penal Code (hereinafter referred to as â??IPCâ?? in short).

2. Status reports stand filed, wherein it is stated that petitioners are retired District Auditors, who were engaged to audit accounts of the Karloti Gram

Sewa Sehkari Sabha Samiti Paplah during the period from 2010 to 2018. As per status report, petitioner Dev Raj Dogra had done audit of the Society

during 2010-11, 2012-13, 2014-15, 2016-17 and 2017-18, whereas, petitioner Shadi Lal had done audit of the Society during the period 2015-16. It is

stated that during audit, both the petitioners have acted negligently and have failed to point out the discrepancy in the Cash Book and the FDR shown to have been prepared for an amount more than the amount shown in the Cash Book, which indicates that they had not checked the Cash Book with

due diligence and had failed to highlight the shortcomings. According to prosecution, Auditors had conspired with deceased Shashi Kumar, Secretary

of the Society and had helped him to embezzle amount of more than Rs.8 Crores.

3. It is also stated in the status report that Shashi Kumar, Secretary of the Society, had expired on 13.08.2018, and after his death audit of the Society

for the years 2016-17 and 2017-18 was done by petitioner Dev Raj Dogra and it was found that deceased Shashi Kumar had embezzled an amount of

more than Rs.8 Crores.

4. As per status report, during inquiry, it has been found that late Shashi Kumar had purported the deposit of amount in 18 FDRs in H.P. State

Cooperative Bank Gugga Mohra Branch which were in fact, fabricated and were also reflected in Cash Book of the Society and first forged FDR of

Rs.27,00,000/- was purported to have been prepared on 25.05.2009 and last forged FDR for Rs.75,00,000/-was shown as prepared on 20.04.2015 and

most of deposits in forged FDR were purported to have been invested during the year 2016-17. These FDRs were also shown to have been renewed

and in this manner there was embezzlement of Rs.5,32,88,321/-.

5. It is stated that as per record of the Society, it was never resolved by the Society to deposit the amount in FDR and no other document directing to

do so has been found in the record.

6. On verification from Himachal Pradesh Cooperative Society, Bank Branch Gugga Mohra, aforesaid FDRs have not been found to be genuine as

there no such amount was ever deposited against FDR in the said bank. According to status report, deceased Shashi Kumar had deposited amount in

the account of his wife Reeta Devi opened in the Cooperative Society as loan against deposit despite the fact that he/she was not entitled for such

huge loan from the Cooperative Society. It is stated that in the audit conducted after the death of Shashi Kumar embezzlement of Rs.8,12,48,183/- has

been reflected.

7. Petitioners have joined investigation and it is reported in the status report that they are hiding truth and during investigation they have stated that

deceased Shashi Kumar had produced fixed deposit certificates before them during audit, which were looking genuine, but later on these FDRs have been found fabricated and forged, however, they are further claiming that in the record of the Society, there is no document available related to forged

FDRs. Lastly, it is stated that consideration and profit, for which petitioners did not highlight and point out discrepancy and shortcomings in the record

of the Society during audit, is yet to be investigated/ascertained. Nowhere in the status report, custodial interrogation of the petitioners has been

warranted.

8. Learned counsel for the petitioners submits that petitioner Dev Raj Dogra is 66 years old, whereas petitioner Shadi Lal is 72 years old and they

have joined the investigation and are ready and willing to join the investigation, to cooperate with Investigating Agency in all respects and to abide by

all the conditions which deemed fit to be imposed upon them.

9. Considering nature of role in commission of the offence as alleged in status report and submissions made by learned counsel for the petitioners as

well as learned Deputy Advocate General alongwith submissions made in the status report, at this stage, I find that no purpose is going to be served by

keeping the petitioners behind the bars and thus they are entitled to be enlarged on bail in case FIR No.5 of 2020 dated 03.11.2020, under Sections

420, 409, 467, 468, 471 and 477A read with Section 120B of IPC, registered in Police Station SV & ACB Bilaspur, H.P., on their furnishing personal

bond in the sum of Rs.1,00,000/- each with one surety each in the like amount, to the satisfaction of the trial Court within two weeks from today, upon

such further conditions as may be deemed fit and proper by the trial Court, including the following conditions enumerated hereinafter, so as to ensure

the presence of petitioners/accused during investigation and at the time of trial:-

(i) That the petitioners shall make themselves available to the police or any other Investigating Agency or Court in the present case as and when

required;

(ii) that the petitioners 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 them from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to

overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioners shall not obstruct the smooth progress of the investigation/trial;

 

(iv) that the petitioners shall not commit the offence similar to the offence to which they are accused or suspected;

(v) that the petitioners shall not misuse their liberty in any manner;

(vi) that the petitioners shall not jump over the bail; and

(vii) that they shall not leave the territory of India without prior information. They shall inform the Police/Court their contact numbers and shall keep on

informing about change in addresses and contact numbers, if any, in future.

10. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioners as deemed

necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any

other or further condition on the petitioners as it may deem necessary in the interest of justice.

11. In case the petitioners violate any condition imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may

approach the competent Court of law for cancellation of bail, in accordance with law.

12. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139

dated 18.03.2013.

13. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of

the bail applications.

14. Registry to transmit a copy of this order to the trial Court through E-mail.

Copy dasti on usual terms.