(2022) 08 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1618, 1644 Of 2022

Sunil Dutt And Others — APPELLANT

Vs

State Of Himachal Pradesh — RESPONDENT

Date of Decision : 04-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438, 439
Indian Penal Code, 1860 — Section 120B, 409

Citation : (2022) 08 SHI CK 0014

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Basant Pal Thakur, Hemant Vaid, Kashmir Singh Thakur

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. These petitions, arising out of one and the same FIR, to be decided on the basis of common facts and circumstances, and material on record, are being disposed of by this common order.

2. Petitioners, invoking Section 439 of the Code of Criminal Procedure, have approached this Court for grant of bail in case FIR No.28 of 2022, dated 21.4.2022, registered under Sections 409 and 120-B of the Indian Penal Code (for short 'IPC'), in Police Station Theog, District Shimla, Himachal Pradesh.

3. Status Report stands filed. Record has also been made available. Earlier petitioners had approached the Special Judge (CBI), Shimla as well as this High Court under Section 438 Cr.P.C seeking anticipatory bail. Those petitions were dismissed by this Court and petitioners were arrested by the Police on 17.6.2022. Thereafter, they remained in police custody till 25.6.2022 and since 25.6.2022, they are in judicial custody.

4. Petitioners had approached the Court of Additional Sessions Judge(II), Shimla

seeking regular bail under Section 439 Cr.P.C. Their petitions were dismissed by the said Court on 4.7.2022. Thereafter, petitioners have now approached this Court invoking provisions of Section 439 Cr.P.C.

5. Prosecution case is that on finding shortage of stock and discrepancies with respect to receipt and sale of stock at Petrol Pump Deorighat, being run by HIMFED, four members Departmental Committee, under the General Manager, HIMFED, was constituted on 11. 4.2022 to look into the issue. The Committee in its Report dated 18. 4.2022 pointed out serious financial irregularities and embezzlement of Government funds to the tune of Rs.1,30,83,787.36 Ps. During inquiry, two employees namely Mool Raj, who was Incharge of Petrol Pump, and Sunil Dutt, who was Outsourced Clerk, deployed on the same Petrol Pump accepted their role in embezzlement and promised to repay the amount.

6. On the basis of aforesaid Report, a complaint dated 19.4.2022 was received from Incharge, HIMFED Regional Office Shimla, in Police Station Theog. On the basis of it, FIR was registered and investigation was handed over to Sub Inspector/Incharge Ram Asra. Keeping in view the sensitivity and seriousness of matter, the Director General of Police, Himachal Pradesh constituted a Special Investigating Team.

7. During investigation, as per status report, petitioners disclosed that during the year 2018, there was deficit of Rs.2,40,000/- in the accounts of Petrol Pump and to cover-up that gap, Mool Raj had deposited Rs.1 lac but remaining amount was not deposited by anyone and to recover the aforesaid amount, Mool Raj and Sunil Dutt started to record lesser sale in the Register than actual sale but by 31st March, 2019 this deficit became Rs.5 lacs and, therefore, Mool Raj started to deposit the amount in the account of HIMFED after borrowing it from persons other than employees of HIMFED and on 31st March, 2022, in the Cash Book, deficiency became Rs.13,84,000/- whereupon, Mool Raj arranged Rs.11 lacs and deposited the same in the account of HIMFED in order to keep the account of HIMFED in order during Financial Year. Further that Mool Raj and Sunil Dutt, during 22nd March to 30th March, 2022, did not enter/record supply of seven tankers to Petrol Pump in Registers because after recording receipt of these tankers in the Register, Cash Book, account of HIMFED, on 31st March, 2022, would not have been settled. Managing Director of HIMFED received an information in this regard on 11.4.2022 whereupon he constituted a Committee and as per Report of Committee, there was shortage of 81598 litres petrol, 47308 litres diesel, 13500 lubricants on Petrol Pump with underground shortage of 4246 litres petrol, 2124 litres diesel, which was worth Rs.1,30,83,787.36 Ps.

8. As per status report, it has come in investigation that according to appointment orders, Vipin Mista, Sita Ram and Suresh Kumar were appointed as Clerks, Storekeeper and Peon respectively but Mool Raj, at his own level, had ordered specially that Sunil Dutt shall maintain the office record, bank record and bills and daily sales summary as well as depositing of cash in bank. During investigation, entries in Cash Book of Petrol Pump, daily sale record and stock

registers have also been found incorrect. As per prosecution case, Mool Raj and Sunil Dutt were showing lesser sale in Petrol Pump since 2018 and used to deposit lesser amount of sale in Bank by embezzling the amount and after sometime, they used to manage/settle the details of sale in record. As per status report, Investigating Agency is perusing remaining record of the years 2018 to 2022 pertaining to Petrol Pump in question.

9. As per status report, Devinder Thakur, who remained Accountant in HIMFED Area Office since 2018, was associated during investigation but during interrogation, he did not disclose anything. Further that Anil Kashyap, appointed in HIMFED Area Office since 2018 was also asked to join the investigation by informing him. It has been stated in status report that petitioners are bucking responsibility of offences upon each other.

10. It has been submitted by learned counsel for petitioners that petitioners were not only employees deputed on Petrol Pump but other employees were also serving on Petrol Pump and further that as per prescribed procedure, everyday sale was to be reported to Area Manager and was to be entered in record by concerned Accountant and, therefore, it was not possible for petitioners to involve in commission of offence as alleged, and and in case any discrepancy or shortfall in stock or amount deposited in Bank of HIMFED is there, then Accountant as well as Area Manager were and are responsible for maintaining the record on day-to- day basis and they should be main accused persons, but petitioners are being made scapegoat.

11. It has also been submitted by learned counsel for the petitioner that though it is claimed by complainant and Investigating Agency that embezzlement was going on since 2018 but balance sheet of years 2018-19 does not reflect any such shortfall but depicts that everything was in order at that time.

12. It has been further contended by learned counsel for the petitioner that though some amount against the payment of sale has been received in the account of Sunil Dutt, but such amount was received by him for reason that HIMFED had not provided QR Code for receiving the payments through Google Pay whereas some customers used to make payments through Google Pay and to facilitate them, petitioner Sunil Dutt used to receive the amount in his account through Google Pay and thereafter deposit/transfer the same in Bank Account of HIMFED.

13. Learned counsel for the petitioners have further submitted that interrogation of the petitioners is complete and now they are in judicial custody and whereas investigation is still going on. However, no other employee amongst employees, who were posted alongwith petitioners and having independent charge and control of the Patrol Pump in absence of petitioners, has been arrayed as an accused rather they have not even been interrogated. Further that there are other Officers, who were having control over the petitioners and who were responsible for maintaining the accounts and day-to-day expenditure and also

receipt of the sale, but they have not been associated and implicated but petitioners have been implicated by pick and choose.

14. It has been further submitted by learned counsel for the petitioners that prosecution case is that petitioners were indulging in embezzlement of the amount since 2017-2018 but it is a matter of fact that since then petitioners have not purchased any land, house vehicle or ornaments etc and there is no property earned by the petitioners disproportionate to their legal income rather no property has been acquired by the petitioners during this period and, therefore, it is unbelievable that petitioners have embezzled amount of Rs.1,30,83,786/-. There is no bank balance or deposit by the petitioners in any institution or financial institution so as to substantiate plea of the prosecution that petitioners have embezzled more than Rs.1,30,00,000/-.

15. It is further case of the petitioners that they are innocent persons who were working under supervision of higher authorities and it was not possible for them to embezzle such huge amount without knowledge of the higher authorities, rather according to them, real culprits are not being interrogated or implicated, whereas in order to cover up the case and to save skin, a report has been concocted and manufactured implicating the petitioners in commission of alleged offence and, therefore, they are entitled to be enlarged on bail.

16. Learned Additional Advocate General has submitted that keeping in view the quantum of amount embezzled in present case, petitioners do not deserve to be enlarged on bail, whereas learned counsel for the petitioners have submitted that guilt of the accused persons is yet to be established in the Court by leading evidence by prosecution and orders of posting of petitioners as well as others clearly reflect that not only petitioners but other persons were also engaged in running of Patrol Pump but petitioners only have been made accused by targetting them and, therefore, they are entitled for bail.

17. Without commenting upon rival contention of the parties but taking into consideration entire facts and circumstances of the case, submissions made by learned counsel for the parties and also factors and parameters propounded by the Courts necessary to be considered at the time of adjudication of bail application, I find that petitioners may be enlarged on bail at this stage.

18. Accordingly, the petitions are allowed and petitioners are ordered to be released on bail, 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 trial Court, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to assure presence of petitioners/accused 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 him/her 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;

(vii) that the petitioners shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial;

(viii) that the petitioners shall not leave India without permission of the Court.

19. 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.

20. In case the petitioners violates any conditions 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.

21. Learned 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.

22. Observations made in these petitions hereinbefore shall not affect merits of the case in any manner and are strictly confined for the disposal of the bail applications.

23. The parties permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, it may verify the passing of order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.