

(2022) 03 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 122, 123, 124 Of 2022

Vinod Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 07-03-2022

Acts Referred:

Indian Penal Code, 1860 — Section 120, 406, 420, 506

Citation : (2022) 03 SHI CK 0018

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : H.R. Jhingta, Sudhir Bhatnagar, Desh Raj Thakur, Narender Thakur

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Sequel to orders dated 17.1.2022 and 4.2.2022, whereby the petitioners were ordered to be enlarged on bail in case FIR No.30/2021 dated 26.11.2021, registered at Police Station, CID Crimes (HP), Shimla, under Sections 420, 406, 506 read with Section 120 of Indian penal Code, respondent-state has filed the status report. ASI Suresh Kumar, CID Crime Branch, District Shimla, HP, has also come present with the records. Records perused and returned.

2. Close scrutiny of record/status report made available to this Court reveals that on 26.11.2021, 23 orchardists belonging to district Shimla, lodged a complaint with PS CID Crime, Shimla, alleging therein that in the year, 2019, M/s Himachal Rose Apple, Bye Pass Road Solan, New Sabzi Mandi Solan, owned by Mr. Bhagwan Singh alias Guddu purchased their apple crop, but failed to make the payment. Though above named proprietor of M/s Himachal Rose Apple issued cheques in favour of some of the orchardists qua their apple crop, but same were dishonored on account of insufficient funds in the bank account. Though as per investigation, sum of Rs. 31,72,962/- is payable to 23 complainants/orchardists by M/s Himachal Rose Apple Solan, but only sum of Rs. 5,00,000/- after the

registration of the case have been deposited by the brother of Bhagwan Singh alias Guddu, who is absconding.

3. During investigation, police found that Bhagwan Singh after having purchased the apple crop from 23 orchardists had sold the same to M/s VCD Fruit Merchants, Solan, owned by the present bail petitioners. As per investigation, VCD Fruit Merchants, Solan, failed to make the payment to M/s Himachal Rose Apple Solan and as such, proprietor of the aforesaid concern failed to make the payment to the complainants. In the aforesaid background, the bail petitioners herein being proprietor of M/s VCD Fruit Merchants came to be named in the FIR and since pursuant to order dated 17.1.2022, bail petitioners have joined the investigation and nothing remains to be recovered from them, prayer has been made on their behalf for confirmation of interim bail granted in their favour on 17.1.2022.

4. Mr. Sudhir Bhatnagar, learned Additional Advocate General submits that pursuant to order dated 17.1.2022, only two bail petitioners namely Vijay Pal Verma and Vinod Kumar have joined the investigation, whereas one bail petitioner namely Niraj Dogra, despite notice has not joined the investigation. Mr. Bhatnagar, further submits that certain documents are yet to be recovered from the bail petitioner and as such, it may not be in the interest of justice to enlarge them on bail.

5. Having heard learned counsel for the parties and perused material available on record, this Court finds that at no point of time, complainants/orchardists leveled allegation, if any, of fraud against the petitioners herein, rather they specifically alleged that in the year, 2019, they had sold their apple crop to M/s Himachal Rose Apple Solan owned by Mr. Bhagwan Singh alias Guddu. During investigation, it has emerged that above named Bhagwan Singh alias Guddu sold the apple crop purchased by him from the complainants to M/s VCD Fruit Merchants. It is not the case of the investigating agency that proprietor of M/s Himachal Rose Apple Solan i.e. Bhagwan Singh alias Guddu, lodged FIR/complaint, if any, against the proprietors of M/s VCD Fruit Merchants that they after having purchased the apple crop belonging to the orchardists failed to make the payment and as such, it is not understood that on what basis bail petitioners, who are proprietor of M/s VCD Fruit Merchants came to be named in the FIR. Record clearly reveals that after registration of case, sum of Rs. 5,00,000/-, came to be deposited with police by brother of Bhagwan Singh alias Guddu. There is no material worth credence available on record suggestive of the fact that M/s VCD Fruit Merchants did not pay the money, if any, on account of purchase, if any, made by them of apple crop from M/s Himachal Rose Apple Solan owned by Bhagwan Singh alias Guddu. Mere factum, if any, with regard to sale made by Bhagwan Singh alias Guddu to M/s VCD Fruit Merchants would not automatically make them liable for amount, if any payable to the complainants, who had actually sold their crop to M/s Himachal Rose Apple Solan not to M/s VCD Fruit Merchants. Otherwise also, factum with regard to sale, if any, made by

M/s Himachal Rose Apple Solan to M/s VCD Fruit Merchants by Bhagwan Singh alias Guddu, cannot be ascertained in the criminal proceedings, rather such fact, if any, is required to be proved in accordance with law in civil proceedings by M/s Himachal Rose Apple Solan.

6. Though case at hand is to be decided by the court below in totality of evidence led on record by the investigating agency but taking note of the aforesaid glaring aspect of the matter, this Court sees no reason for further custodial interrogation of the present bail petitioners, who have otherwise made themselves available for investigation pursuant to order dated 7.1.2022. Hon'ble Apex Court as well as this Court in catena of cases have repeatedly held that one is deemed to be innocent till the time guilt, if any, of his/her is not proved in accordance with law. In the case at hand also, guilt, if any, of the accused is yet to be proved in accordance with law, by leading cogent and convincing material on record. Apprehension expressed by the learned Additional Advocate General that in the event of petitioner's being enlarged on bail, he may flee from justice, can be best met by putting the bail petitioner to stringent conditions as has been fairly stated by the learned counsel for the petitioner.

7. Needless to say, object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime. See: Sanjay Chandra versus Central Bureau of Investigation (2012)¹ Supreme Court Cases 49, Manoranjana Singh Alias Gupta versus CBI 2017 (5) SCC 218, and Prasanta Kumar Sarkar v. Ashis Chatterjee and Another (2010) 14 SCC 496.

8. Hon'ble Apex Court in Criminal Appeal No. 227/2018, Dataram Singh vs. State of Uttar Pradesh & Anr., decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case.

9. Consequently, in view of the above, order dated 17.1.2022, passed by this Court, is made absolute, subject to the following conditions:

a. They shall make themselves available for the purpose of interrogation, if so

required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

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 promises to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or the Police Officer; and

d. They shall not leave the territory of India without the prior permission of the Court.

10. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

11. Any observations made hereinabove shall not be construed to be a reflection on the merits of the main case and shall remain confined to the disposal of these applications alone.

The bail petitions stand disposed of accordingly. Copy Dasti.