

In the Court of Hoshiar Singh Verma, Special Judge-II Una, District Una, HP.

Bail application CIS No. : 320/2023
CNR HPUN-01002385-2023.
Date of Institution : 25.07.2023.
Date of Decision : 18.08.2023.

Tejinder Pal S/o Sh. Balbir Chand, resident of Village Nari, Post Office Bana Dera Rudru, Tehsil and District Una, HP.

.....Applicant.

Versus

State of Himachal Pradesh

...Respondent.

Bail application under Section 439 Cr.P.C.

For the petitioner : Sh. Sahil Thakur, Advocate.
For the respondent : Ms Pooja Dhiman, Additional Public Prosecutor.

ORDER

This order shall dispose of application preferred on behalf of the applicant, who is accused in case FIR No.102/2023 dated 06.07.2023 under Sections 380, 457, 411 read with Section 34 of IPC, registered with Police Station Amb against the State of HP.

2. It is averred that the applicant has been arrested in case FIR No.102/2023 dated 06.07.2023 under Sections 380, 457, 411 read with Section 34 of IPC, registered with Police Station Amb and after suffering police custody he is suffering judicial custody at District Jail Bangarh. The applicant has undertaken not only to furnish solvent surety but also to abide by any condition that may be imposed upon him in the event of his release on bail. Not only this, he has claimed himself to be innocent and having been falsely implicated in this case and has undertaken not to tamper with prosecution evidence in any manner whatsoever.

3. The learned Addl. Public Prosecutor for the State waived off service of

notice to be served upon him and as such she was supplied with copy of application vide order dated 26.07.2023 with direction to put up reply thereof on 01.08.2023.

4. The reply put up by the prosecution would show that the applicant is suffering judicial custody and some stolen articles have been recovered from him and rest of the stolen articles which are in the form of 3 'Kadahi', 2 'Patilas', 4 taps, utensils etc. have been sold by him just to cause destruction of evidence of crime committed by him and Section 201 of IPC has been incorporated in the case against him. Not only this, one more criminal case is also reported to the credit of the accused/applicant registered with Police Station Haroli vide FIR No.133/2022 dated 09.06.2022 under Sections 379, 411, 34 of IPC and because of the commission of crime of like nature there is great resentment among people of the area.

5. I have heard learned counsel for applicant and learned Additional Public Prosecutor for the State of HP and have gone through the entire material on case file carefully.

6. The applicant has been arrested for his having received stolen property from his co-accused having reason to believe the same to be stolen property under Section 411 of IPC on July 19, 2023. He was produced before the Court on 20.07.2023 for seeking his police custody, which was granted vide order dated 20.07.2023 and resultantly application under Section 437 of Cr.P.C. preferred for his release on bail was dismissed by learned Addl. Chief Judicial Magistrate, Court No.I, Amb, District Una, HP. However, on 22.07.2023 the applicant/accused came to be remanded to judicial custody and thereafter he is suffering judicial custody at District Jail Bangarh till today. It would show that presence of applicant/accused is no more required by the police for the purpose of investigation. Even otherwise also, the reply put up by the prosecution would show that the investigating agency has acted upon version of the applicant/accused in regard to the rest of the stolen articles which are claimed to have been sold by him, otherwise there was no occasion to incorporate Section 201 of IPC in the matter.

7. It is not in dispute that the applicant/accused is junk-dealer and deals in purchase and sale of junk articles. The stolen articles are claimed to have been purchased by him having reasons to believe the same to be stolen property. These allegations are yet to stand judicial scrutiny. He has already suffered heat of police and judicial custodies since his arrest on 19.07.2023 and in my considered view his further detention in the judicial custody would not serve any fruitful purpose rather it would burden state exchequer unnecessarily.

8. Even otherwise also, the objections raised by the prosecution while opposing bail application can be met with easily by imposing conditions in that regard and the same are not worth to decline bail to the applicant/accused. It is well settled proposition of law that bail is a rule and jail is an exception and while curtailing personal liberty of wrongdoer the court is required to strike balance between them. If to go by this aspect of the matter, I am of the considered view that curtailment of personal liberty of applicant/accused would tantamount pretrial conviction to him which the law does not permit in view the gravity of the allegations attributed to the applicant/ accused which are yet to stand judicial scrutiny. The applicant/accused has definite place of abode within the jurisdiction of the learned Trial Court and therefore there are no chances of applicant/accused evading the trial. The solvent surety to be furnished would act as a pool between the applicant/accused and the court for securing his presence before the Court during the trial.

9. Thus, in view of overall discussion, I am of the considered view that no fruitful purpose is likely to be served by detaining the applicant/accused in judicial lock-up and as such, the application is allowed and applicant is admitted on bail subject to furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of learned Addl. Chief Judicial Magistrate, Court No.1, Amb, or in his absence any learned Judicial Magistrate First Class stationed at Amb, District Una, HP. However, the bail granted to the applicant shall be subject to the

following conditions:-

- a) He shall make himself 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) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- c) He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and
- d) He shall not leave the territory of India without prior permission of the Court.

10. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confine to the disposal of this petition alone. A copy of this order be given dasti on usual charges. The file on completion, be tagged with concerned case FIR for record.

ANNOUNCED
18.08.2023

(Hoshiar Singh Verma)
Special Judge-II Una,
District Una, H.P.

/A.K./

18.08.2023

Present: Sh. Sahil Thakur, Advocate for applicant.
Ms Pooja Dhiman, learned Additional Public Prosecutor for the
State of HP.

Vide separate detailed order of even date duly placed on record, the application is allowed. The file on completion, be submitted for being tagged with concerned case FIR for record.

Announced
ANNOUNCED
18.08.2023

(Hoshiar Singh Verma)
Special Judge-II Una,
District Una, H.P.

ADDL. DISTRICT AND SESSIONS JUDGE-II, UNA