

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP(M) No. : 2342 of 2024

Reserved on : 25.11.2024

Decided on : 28.11.2024

Mohammad Ashraf ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹

For the applicant : Mr. Kush Sharma, Advocate.

For the respondent : Mr. Mohinder Zharaick, Mr. H.S. Rawat Additional Advocates General with Ms. Ranjana Patial, Deputy Advocate General, assisted by ASI Narender Kumar (IO), PP Fagu, PS Theog, District Shimla.

Virender Singh, Judge

Applicant-Mohammad Ashraf has filed the present application, under Section 483 of the Code of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS'), for releasing him, on bail, during the pendency of trial, in case FIR No.115 of 2024, dated 17.09.2024 (hereinafter referred to as the 'FIR in question'),

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

registered with Police Station, Theog, District Shimla, H.P., under Sections 303(2), 61(2) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as the 'BNS').

2. According to the applicant, he has falsely been implicated, in the present case and has been arrested by the police on 27.09.2024.

3. It is the case of the applicant that the investigation, in the present case, is complete and the applicant is in judicial custody. As such, according to him, no useful purpose would be served by keeping him in the judicial custody.

4. Applicant has also given the history of the case, which have been registered against him. The same are reproduced, as under:-

- i. FIR No.64/2016 u/s 379 RPC, PS Jammu*
- ii. FIR No.74/2017 u/s 376, 109, 506 RPC PS Bus Stand, Jammu*
- iii. FIR No.85/2017 u/s 307, 353, 341, 323, 147, 225(b) RPC PS Thanamandi Rajouri*
- iv. FIR No.53/2018 u/s 379 RPC PS Bahuport Jammu*
- v. FIR No.129/2019 u/s 380, 201 RPC PS Akhnoor Jammu*
- vi. FIR No.57/2021 u/s 380 IPC PS Gandhi Nagar, Jammu*
- vii. FIR No.286/2022 u/s 380 IPC Thana Gandhinagar, Jammu*
- viii. FIR No.92/2023 u/s 279 IPC and 184 of MV Act, PS Nusera Rajouri*

ix. Complaint u/s 107, 117, 110 CrPC, at PS Tanamandi.”

5. On the basis of above facts, the applicant has further pleaded that firstly, he has tried his luck by filing application for bail, before the Court of Additional Chief Judicial Magistrate, Theog, District Shimla, H.P, however, the same was dismissed, vide order dated 05.10.2024.

6. Thereafter, applicant has also filed the bail application, bearing No.437 of 2024, before the Court of learned Additional Session Judge, Rohru, Camp at Theog, District Shimla, H.P., however, the same was also dismissed vide order dated 19.10.2024.

7. The applicant, through his counsel, has given certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail.

8. On the basis of above facts, a prayer has been made to allow the application.

9. When put to notice, the police has filed the status report, disclosing therein, that on 17.09.2024, ASI Narender Kumar, Incharge, Police Post Fagu, along with other police officials, was on patrolling duty and when, he was present at Apple Control Room, Fagu, then, Suresh

Kumar, S/o Surat Ram, R/o Village Balloa, Tehsil Theog, District Shimla, H.P., has produced a complaint, mentioning therein that he is the resident of abovementioned address and is having Mahindra Bolero, bearing Registration No.HP09-B-7111 (hereinafter referred to as the 'vehicle in question'), which has been registered in his name. The said vehicle was used by him, as well as, his son-Vikrant.

9.1. As per the said complaint, complainant's son Vikrant has obtained the premises of Jajru Cafe Fagu on lease and used the said vehicle for transportation of the goods of the said cafe.

9.2. On 16.09.2024, at about 12:10 in the midnight, the said vehicle was parked under the cafe. However, when, his son Vikrant noticed at 12:25 in the night, the said vehicle was not there. When, the CCTV camera of the cafe was checked, then, it was noticed that three unknown persons came near the vehicle and one person had opened the same and thereafter, they had taken away the said vehicle.

9.3. On the basis of above facts, complainant has stated that despite efforts, made by him, as well as, his son Vikrant, they could not trace the said vehicle and as such, he has prayed that action may be taken against those three persons.

9.4. Thereafter, police has registered the FIR in question and police machinery swung into motion.

9.5. It is the further case of the police that on 17.09.2024, the spot was visited by IO and the spot map was prepared. The documents were prepared. Thereafter, the CCTV cameras, which were installed in the said cafe, were checked.

9.6. From the perusal of the said CCTV cameras, which have been collected by the IO, three persons, in suspicious condition, were found travelling in vehicle bearing registration No.JK11-G-4123.

9.7. On 16.09.2024, three persons were found coming on foot towards Apple Control Room and in the CCTV cameras, the said three persons were found taking away the vehicle in question, after opening the door of the same.

9.8. It is the further case of the police that total 6 suspicious persons were found to be involved in the theft of the vehicle in question. Thereafter, the efforts to trace the vehicle were made. The above suspicious persons had also removed the registration plate of Alto No.HP14-C-9596 from Kaithli Ghat, District Solan and they used to travel by fixing the registration plates No.HP09-B-7111 and HP14-C-9596.

9.9. It is the further case of the police that on 26.09.2024, vehicle, make Swift, bearing registration No.JK11-G-4123, was intercepted near Police Station Mandi on Rajori Road. In the said vehicle, driver Mohammad Ashraf (applicant), s/o Mohammad Husain, was found. On enquiry, he has disclosed that he has visited Shimla from 14.09.2024 to 17.09.2024. When, involvement of the said vehicle was found in the case, the same was taken into possession.

9.10. During investigation, vehicle in question was found parked near Darahi Bridge, Rajori Road, Mandi. The vehicle in question was identified by the son of the complainant.

9.11. It is the further case of the police that till the time, ASI Narender Kumar, along with other police officials, reached to the vehicle, two persons, by taking the benefit of darkness, fled away from the spot. The said persons were identified by Mohammad Ashraf (applicant), as Visharas @Visa and Zafar @Iqbal. From the said vehicle, original number plate bearing No.HP09-B-7111 was also found along with the other, but, spare number plate i.e. No.HP14-C-9596 was not found.

9.12. On 27.09.2024, the applicant was arrested, in this case. Both the vehicles were taken into possession. Thereafter, the applicant was produced, before the Court of learned Additional Chief Judicial Magistrate, Theog and subsequently, he was remanded to police custody till 30.09.2024.

9.13. During investigation, applicant has identified the place and his statement, under Section 180 of BNSS, was also recorded, in which, he has deposed about the manner, in which, they had stolen away the vehicle.

9.14. In the status report, details of the 10 cases, registered against the applicant, have also been given.

Lastly, it has been apprehended that the applicant is the resident of Jammu & Kashmir and in case, he is ordered to be released on bail, he may not be available for the trial and may again indulge in the same activity.

9.15. Apart from this, it has been apprehended that he may coerce the witnesses and allure them not to depose against him.

9.16. The accomplice in crime, Prashant Sharma, has also not yet been arrested, as, on enquiry, it was found that no person, with the name of Prashant Sharma, is residing at the given address.

10. On the basis of above facts, a prayer has been made to dismiss the application.

11. So far as the objection of the State, qua registration of number of cases, against the applicant, is concerned, admittedly, in none of the cases, the applicant has been convicted by the competent Court of law. Despite registration of number of cases, presumption of innocence is still available to him. Merely, on the basis of the registration of number of cases, the present bail

application cannot be rejected, as a matter of punishment, as, pre-trial punishment is prohibited, under the law.

12. The role, which has allegedly been attributed to the applicant, will be proved, during the trial and no useful purpose would be served, by keeping the applicant in the judicial custody.

13. So far as the apprehensions, which have been expressed, by the police, in the status report, are concerned, merely, since the applicant is the resident of Jammu & Kashmir, his bail application cannot be rejected and for other apprehensions, reasonable conditions can be imposed upon him, in case, he is ordered to be released on bail.

14. Even, as per the stand of the police, on 26.09.2024, the applicant was found travelling in vehicle bearing Registration No.JK11-G-4123, whereas, the vehicle in question was found parked at a secluded place.

15. Considering all these facts, this Court is of the view that the applicant is able to make out a case for his release. Accordingly, the present bail application is allowed.

16. Consequently, the applicant is ordered to be released, on bail, in case FIR No.115 of 2024, dated 17.09.2024, registered with Police Station, Theog, District Shimla, H.P., under Sections 303(2), 61(2) of the BNS, on his furnishing bail bonds, in the sum of Rs.75,000/- with two sureties, in the like amount, to the satisfaction of learned trial Court. This order, however, shall be subject to the following conditions:

a) The applicant 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) The applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) The applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer; and

d) The applicant shall not leave the territory of India without the prior permission of the Court.

17. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as, these observations, are confined, only, to the disposal of the present bail application.

18. It is made clear that respondent-State is at liberty to move appropriate application, in case, any of the

bail conditions, is found to be violated, by the applicant.

19. Registry is directed to forward a soft copy of the bail order to the Superintendent of Jail, District Jail, Kaithu, Shimla, through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

20. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of Jail, District Jail, Kaithu, Shimla, is directed to inform this fact to the Secretary, DLSA, Shimla. The Superintendent of Jail, District Jail, Kaithu, Shimla, is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, then, the said fact be submitted to this Court.

(Virender Singh)
Judge

November 28, 2024
(Gaurav Thakur)