



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. M.P.(M) No. 2527 of 2022**

**Reserved on: 04.01.2023**

**Decided on: 07.01.2023**

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Rohit Chauhan .....Petitioner

**Versus**

State of Himachal Pradesh .....Respondent

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***Coram***

***The Hon'ble Mr. Justice Satyen Vaidya, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes***

**For the petitioner: Mr. C. N. Singh, Advocate.**

**For the respondent: Mr. Manoj Chauhan and Mr. Varun Chandel, Additional Advocate Generals.  
Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rajesh Kumar, Advocate, for the complainant.**

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**Satyen Vaidya, Judge.**

By way of instant petition, a prayer has been made for grant of pre-arrest bail to petitioner in case FIR No. 94 of 2022, dated 19.11.2022, registered at Police Station, Kotkhai, District Shimla, H.P. under Sections 408 and 34 of IPC.

<sup>1</sup>Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

2. The case has been registered on the basis of a complaint received by the police from Proprietor “Stan H.P. Enterprises” Gumma, which is a retail sale outlet for petroleum products, alleging inter alia that his four employees including the petitioner have misappropriated an amount to the tune of Rs.28,57,022/-. He further alleged that all the accused had absconded.

3. During investigation, the police is stated to have taken into possession the records maintained at “Stan H.P. Enterprises”. The investigation also discovered that the petitioner is maintaining five different bank accounts in his name and between February, 2022 to November, 2022, a total sum of Rs.17,57,014/- was deposited in his account with the Punjab National Bank. Out of such amount, a sum of Rs.3,26,372/- is stated to have been transferred to the account of another co-accused and Rs.2,45,645/- in the account of the complainant. The balance of the amount of Rs.11,84,997/- is stated to be withdrawn by the petitioner, from time to time and some part of it is stated to be transferred through UPI to other persons.

4. The respondent-State has opposed the grant of pre-arrest bail to the petitioner on the ground that the petitioner is not disclosing the name of persons in whose account he has transferred the money in addition to the co-accused and complainant. It has also been submitted that petitioner has been avoiding the questions in this behalf and has also been providing evasive answers.

5. On the other hand, it has been submitted on behalf of the petitioner that the petitioner is innocent. The transactions in his bank account were being made at the instance and with the consent of the complainant as also the Manager of the establishment named Surender Singh Pathania, who was looking after the accounts. It has further been contended on behalf of the petitioner that during investigation, he has fully associated himself and has provided entire detail of accounts to the police. The petitioner is stated to be permanent resident of Village Gumma, Post Office, Gumma, Tehsil Kotkhai, District Shimla, H.P. He has also undertaken to abide by all the terms and conditions as may be imposed while disposing of this application.

6. The case was registered on 19.11.2022. Petitioner was admitted to interim bail on 23.11.2022. More than a month has elapsed thereafter. Petitioner has joined the investigation as and when required. The Investigating Agency already had sufficient time at its disposal to complete the investigation atleast substantially especially keeping in view the facts of the case.

7. It is alleged that petitioner instead of crediting the amount received from retail sale in the account of Petrol Station, had been directly crediting to his account. The allegations against petitioner are subject to proof. Mere fact that huge transaction has been found in the bank account of petitioner does not necessarily lead to the conclusion of his guilt. As per the investigation report, a sum of Rs.2,45,645/- stands transferred from the account of the petitioner to the account of "Stan H.P. Enterprises". From this fact, it can be inferred, atleast prima-facie, that the bank account of "Stan H.P. Enterprises" was receiving payments from the account of petitioner. How and why there was no re-conciliation of the account of the Petrol Station, has not been explained. Had the petitioner

intended to misappropriate the amount by depositing the same to his account, he would not have remitted any amount to the account of the Petrol Station.

8. The observations as above, have been made only to prima-facie assess the seriousness and gravity of allegations against petitioner.

9. The respondent has not been able to justify the reasons for seeking custodial interrogation of petitioner. It is submitted that the petitioner is not disclosing the names and identity of persons in whose account the money has been transferred from his account. The grounds so raised on behalf of the respondents does not appear to be justified for the reason that the bank transactions can be ascertained by the police from documentary evidence. As regards the allegation of money withdrawn by the petitioner from his account and the non-disclosure of identity of persons to whom it has been disbursed, those facts may not be so relevant for proving all the allegations levelled against petitioner. The investigation in a criminal case cannot be used as a recovery proceeding.

10. The importance of personal liberty as a constitutional mandate has been underlined by the Hon'ble Supreme Court in **Siddharth vs. State of Uttar Pradesh and another (2022) 1 SCC 676**, as under:

*“10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”*

11. In **Nathu Singh vs. State of Uttar Pradesh and others (2021) 6 SCC 64**, the Hon'ble Supreme Court has observed as under:

*“19. At first blush, while this submission appears to be attractive, we are of the opinion that such an*

analysis of the provision is incomplete. It is no longer *res integra* that any interpretation of the provisions of [Section 438, Cr.P.C.](#) has to take into consideration the fact that the grant or rejection of an application under [Section 438, Cr.P.C.](#) has a direct bearing on the fundamental right to life and liberty of an individual. The genesis of this jurisdiction lies in [Article 21](#) of the Constitution, as an effective medium to protect the life and liberty of an individual. The provision therefore needs to be read liberally, and considering its beneficial nature, the Courts must not read in limitations or restrictions that the legislature have not explicitly provided for. Any ambiguity in the language must be resolved in favour of the applicant seeking relief. In this context, this Court, in the Constitution Bench decision of this Court in [Gurbaksh Singh Sibbia v. State of Punjab](#), (1980) 2 SCC 565, which was recently upheld and followed by this Court in [Sushila Aggarwal vs. State \(NCT of Delhi\)](#) (2020) 5 SCC 1 at SCC p. 56, para 14, held as follows: (Gurbaksh Singh Sibbia case, SCC p. 586, para 26)

“26. We find a great deal of substance in Mr Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of [Section 438](#), especially when no such restrictions have been imposed by the legislature in the terms of that section. [Section 438](#) is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An overgenerous infusion of constraints and conditions which are not to be found in [Section 438](#) can make its

*provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned.”*  
*emphasis supplied)*

**24.** *However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under Section 438, Cr.P.C., particularly, the proviso to Section 438(1), Cr.P.C., and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one.”*

12. Keeping in view the facts of the case and also aforesaid exposition, I am of the considered view that no case for custodial interrogation of petitioner is made out. The tool of custodial interrogation cannot be used to extract confession. Such interrogation is permissible where the Investigating Agency is without any means to extract the facts. As noticed above, in the instant case the bank transactions can easily be ascertained through documentary evidence.

13. The petitioner is permanent resident of Village Gumma, Post Office, Gumma, Tehsil Kotkhai, District Shimla, H.P. and there is no apprehension of his fleeing from the course of justice. It is also not alleged against petitioner that he potentially can tamper with the prosecution evidence. The State has also not come up with a plea that the arrest of other co-accused is not possible without interrogating the petitioner in custody.

14. Keeping in view the facts of the case, the petition is allowed and the petitioner is ordered to be released on bail, in case of his arrest, in FIR No. No. 94 of 2022, dated 19.11.2022, registered at Police Station, Kotkhai, District Shimla, H.P. under Sections 408 and 34 of IPC, on his furnishing personal bond in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of Investigation Officer. This order is, however, subject to following conditions: -

- (i) *That the petitioner shall make himself available for the purpose of investigation, and when required.*
- (ii) *That the petitioner shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever.*

- (iii) That the petitioner shall not 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 the Court or the Police Officer; and
- (iv) That the petitioner shall not leave India without prior permission of this Court till completion of investigation and thereafter of the trial court.

15. Any observation made hereinabove shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

Petition stands disposed of.

**7<sup>th</sup> January, 2023**  
(GR)

**(Satyen Vaidya)**  
**Judge**

High Court