

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.511 of 2020

Vivek SharmaApplicant

Vs.

State of UttarakhandRespondent

Hon'ble Alok Kumar Verma, J.

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with FIR No.68 of 2019, registered with Police Station Banbasa, District Champawat for the offences under Sections 409,420,466,467,468,471 and 120-B of the I.P.C.

2. According to the FIR, in the scholarship scam, in compliance of the order of this High Court passed in Writ Petition (PIL) No.33 of 2019, a Special Investigation Team was constituted. After enquiry, the informant Jasveer Singh Chauhan, Officer-In-Charge of Police Station Banbasa, District Champawat lodged the FIR against the present applicant, Secretary of Dev Bhumi Vidyapith and other co-accused persons. During investigation, embezzlement of Rs.39,52,000/- was found.

3. During pendency of the regular bail application, the applicant had applied for "default bail" before the learned Chief Judicial Magistrate, Champawat. The said application was rejected on 22.04.2020 after holding that the applicant is not entitled to claim the benefit of default bail in the light of order dated 23.03.2020 passed by the Hon'ble Supreme Court in **Suo Motu Writ Petition (CIVIL) No.3/2020 In Re-Cognizance For Extension Of Limitation.**

The applicant filed the copy of the said order dated 22.04.2020 and orally challenged the said order before this Court.

4. Counter affidavit filed by the State is taken on record.

5. Heard Mr. Sanpreet Singh Ajmani, learned counsel for the applicant and Mr. G.S. Sandhu, learned Government Advocate assisted by Mr. J.S. Virk, learned Assistant Government Advocate for the State through video conferencing.

6. The Hon'ble Supreme Court had ordered on 23.03.2020 in **Suo Motu Writ Petition (CIVIL) No.3/2020**,

“This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

7. On 06.05.2020, the Hon’ble Supreme Court had passed an Order in the very same **Suo Motu Writ Petition (CIVIL) No.3/2020** and extended the limitation period for statutory provisions under Section 138 of the Negotiable Instruments Act and the Arbitration and Conciliation Act with effect from March 15, 2020 till further order.

8. The Hon’ble Supreme Court has not mentioned in the said Orders that investigation will be covered under these Orders. The Orders of the Hon’ble Supreme Court are binding on all the courts including High Courts. No court has the right to interpret the Orders passed by the Hon’ble Apex Court. Therefore, the police investigation is not covered under the Orders of the Hon’ble Supreme Court.

9. In **Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67**, the Hon’ble Supreme Court observed, “on 11th January, 2017 when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of “default bail” since the statutory period of 60 days for filing a charge sheet had expired, no charge sheet or challan had been filed against him (it was filed only on 24th January, 2017) and the petitioner had orally applied for “default bail”. Under (2012) 9 SCC 1 these circumstances, the only course open to the High Court on 11th January, 2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him “default bail” on reasonable conditions. Unfortunately, this was completely overlooked by the High Court.”

10. The learned counsel for the applicant submits that he wants to press only the prayer of default bail at this stage.

11. It is settled principle of law that when the application for bail on default is filed, the merits of the case are not to be gone into, as held by the Hon'ble Supreme Court in **Union of India vs. Thamisharasi and others, (1995) 4 SCC 190**.

12. Personal liberty of the individual, guaranteed under Article 21 of the Constitution of India, is very precious fundamental right and it should be curtailed only according to law.

13. The learned counsel appearing for the State opposed the bail application, however, the learned counsel for the State fairly concedes that the application for default bail was moved by the applicant after the statutory period for filing a charge sheet. It is admitted fact between the parties that the investigation is going on and the applicant is in judicial custody since 23.01.2020.

14. In **Uday Mohanlal Acharya vs. State of Maharashtra, (2001) 5 SCC 453**, the Hon'ble Supreme Court has held, "on the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."

15. Having considered the submissions of learned counsel for both the parties and in the light of the well settled law, this Court is of the view that the applicant is entitled for "default bail".

16. Let the applicant be released on bail on his executing a personal bond and furnishing two reliable sureties, each in the like amount, to the satisfaction of the court concerned subject to the following conditions :-

- i) the applicant shall make himself available for interrogation by the Investigating Officer as and when required;
- ii) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;
- iii) the applicant shall not leave the State of Uttarakhand without prior permission of the concerned trial court.

17. It is clarified that if the applicant misuses or violates any conditions, imposed upon him, the Investigating Officer or the prosecution shall be free to move the Court for cancellation of bail.

(Alok Kumar Verma, J.)
12.05.2020

JKJ