

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P.(M) No.1245 of 2008.

Dated of Decision: November 28, 2008.

Jitender Kumar Petitioner.

Versus

State of H.P. Respondent.

Coram

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

Whether approved for reporting? Yes.

For the Petitioner : Mr. Rakesh Jaswal, Advocate.

For the Respondent: Mr. J.S. Guleria, Law Officer.

Surinder Singh, J (oral):

Heard and gone through the record.

The petitioner is apprehending arrest in non-bailable offences, therefore, he has applied, for pre-arrest bail in FIR No.232/2008 dated 11.7.2008, registered in Police Station Balh, District Mandi, H.P., under Sections 420, 467, 468, 471 of the Indian Penal Code.

Precisely, the case of the prosecution is that the vehicle No.HP-33A-2438, a Maruti-800 Car, was owned by Shri Shakti Chand, father of the petitioner herein. The petitioner is alleged to have been sold it to Shri Amar Singh, Advocate, without the consent of his father by forging his signatures on the sale documents, the transaction was allegedly witnessed and attested by one Shri Pardeep Kumar.

Whether reporters of local papers may be allowed to see the judgment? Yes.

During the investigation of the case, the documents were taken into possession by the police alongwith admitted writings of the petitioner.

The bail has been objected to by Shri J.S. Guleria, learned Law Officer, for the State solely on the ground that for the purpose of obtaining specimen signatures, the petitioner is required to be produced before the Judicial Magistrate, in custody as per the provisions of Section 311-A of the Code of Criminal Procedure.

In my opinion, granting of bail is no hurdle for the exercise of powers by the learned Magistrate under this section and it is not the correct interpretation of the section aforesaid. In fact, Section 311-A of the Cr.P.C. was inserted by an amendment Act (2 of 2005) which came into force w.e.f. 23.6.2006, it empowers the Magistrate to direct any person including the accused to give his specimen signatures or handwriting, if it is thought expedient so to do. He can make an order to that effect in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order, for the purpose of giving his specimen signatures or handwritings. The proviso added to the aforesaid section debars the Magistrate under this section to exercise his powers unless the person has at some time been "arrested" in connection with such investigation or proceeding.

It will not be correct to say that only because the accused person is released on bail, he ceases to be in the custody, therefore, the Magistrate would not be competent to exercise his powers under Section 311-A Cr.P.C. If the bail is granted, the

reality is not changed and from the fact above, it cannot be said that he is not a “person arrested for an offence”. A person released on bail is still considered to be detained in the custody of the court through his surety. He is under obligation to appear before the court whenever required or directed so to do. Therefore, to that extent, his liberty is subject to restraint. He is notionally in the custody of the court, hence continues to be a “person arrested”. Therefore, the jurisdiction of the Magistrate to pass the appropriate orders under Section 311-A of the Code of Criminal Procedure, because the person enlarged on bail is not effected at all. Hence for the reasons aforesaid, there is no hurdle to grant the bail to the petitioner on this objection alone. It is made clear that the powers of the Magistrate are not at all affected in any manner to take his specimen signatures, if it is thought expedient to do so.

As such, the interim bail granted on 26.11.2008 to the petitioner is hereby affirmed, on a further condition added to it that the petitioner shall cooperate with the investigation of this case to take it to the logical end.

The application stands disposed of.

November 28,2008.
(Pds)

(Surinder Singh)
Judge.