

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

- 1. Cr.M.P(M) No. 29 of 2009.
- 2. Cr.MP(M) No.30 of 2009

Date of decision: 30.1.2009

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| 1. Dr. Kuldeep Acharya |Petitioner. |
| Vs. | |
| State of H.P. | Respondent. |

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| 2 Neelam Acharya |Petitioner. |
| Vs. | |
| State of H.P. | Respondent. |

Coram
The Hon’ble Mr. Justice Kuldip Singh, Judge.
Whether approved for reporting? No
For the petitioner : Mr. Naresh Kaul, Advocate
(in both petitions)
For the Respondent : Mr. A.K. Bansal, Addl. Advocate
General.
(in both petitions)

Kuldip Singh, Judge (oral).

This order shall dispose of Cr.MP(M) No.29 of 2009 and Cr.MP(M) No.30 of 2009 as both have arisen out of FIR No.445 of 2008, registered on 22.12.2008 under Sections 403, 420, 468 471 and 120-B IPC at Police Station, Kangra. The status report has been filed.

2. Heard and perused the record.

3. The petitioner Neelam Acharya in Cr.MP(M) No.30 of 2009 is the wife of Dr. Kuldeep Acharya petitioner in Cr.MP(M) No.29 of 2009. The petitioner Dr. Kuldeep Acharya is working as Ayurvedic Medical Officer posted at Regional Ayurvedic Hospital, Katrian, District Kullu. It has been

submitted on behalf of the petitioners by their counsel that the petitioners have been falsely implicated in the case. Dr. Kuldeep Acharya has left only one and half years service for his retirement. Both the petitioners had earlier filed bail applications under Section 438 Cr.P.C. which were dismissed by learned Addl. Sessions Judge (ii) Dharamshala on 7.1.2009. The petitioner Dr. Kuldeep Acharya is getting cancer treatment at Indraprastha Appolo Hospital for the last several years. A vigilance case is pending against him.

4. The learned counsel for the petitioners has submitted that the petitioners are ready to join the investigation. There is no likelihood of their jumping the bail, infact Dr. Kuldeep Acharya petitioner is Govt. servant. The custodial interrogation of the petitioners is not necessary for the investigation of the case. The petitioners are ready to furnish bail bonds as per directions of this Court.

5. The bail application has been opposed by learned Addl. Advocate General on the grounds that on the basis of written complaint dated 22.12.2008 of Branch Manager, Kangra Central Co-operative Bank the case was registered. The case against the petitioners is that on 17.10.2008 Dr. Kuldeep Acharya represented to the complainant that he was posted and working as Ayurvedic Medical Officer at Ayurvedic Health Centre, old Kangra and he wanted loan to purchase furniture items. He submitted an application and documents including DDO undertaking purported to be issued by the Under Secretary Ayurveda, Govt. of H.P. on behalf of Dr. Kuldeep Acharya, personal guarantee of his wife Neelam Acharya stated to be Govt. employee (TGT) working with Govt. School, Jandpur, Tehsil Palampur issued by the Head Master of the said school. The loan was sanctioned and disbursed as per bank norms on 17.10.2008.

6. The DDO undertaking was sent to the issuing authority for

making necessary entry in the salary record of Dr. Kuldeep Acharya, however, the complainant was informed that the said DDO was fake and forged and not issued by the department. Dr. Kuldeep Acharya was not posted at Purana Kangra as represented by him. The enquiry about the salary certificate of guarantor Neelam Acharya also revealed that this certificate was also fake and forged. In these circumstances, both the accused have conspired and deceived the bank fraudulently and dishonestly to deliver and pay loan amount to Dr. Kuldeep Acharya. Out of Rs.3,00,000/-, a sum of Rs.30,000/- has been recovered from the saving bank account and now an amount of Rs.2,70,000/- is still to be recovered. The accused persons have entered into criminal conspiracy. On these grounds the bail application of both petitioners has been opposed. It has been submitted that specimen handwritings and signatures of the accused persons are yet to be taken and petitioners are to be further interrogated.

7. I have considered the rival contentions on either side. There are serious allegations against the petitioner Dr. Kuldeep Acharya who has obtained loan from the bank by presenting documents which according to the prosecution are forged. The learned counsel for the petitioners has submitted that Varun son of the petitioner has been granted bail by JMFC (ii) Kangra who was also arrested in the above case. In the status report it has not been elaborated that in fact Neelam Acharya herself prepared the salary certificate. The prosecution case is that she is a house wife and not a teacher. The allegations against petitioner Neelam Acharya are not so serious in comparison to the allegations against Dr. Kuldeep Acharya, therefore, petitioner Dr. Kuldeep Acharya in Cr.MP(M) No.29 of 2009 is not entitled to pre-arrest bail under Section 438 Cr.P.C. whereas petitioner Neelam in Cr.MP(M) No.30 of 2009 has made out a case for

grant of pre-arrest bail in FIR No.445 of 2008 under Sections 403, 420, 468 471 and 120-B IPC registered at Police Station, Kangra. Accordingly in the event of arrest of petitioner Neelam Acharya, she be released on bail on her furnishing personal bond in the sum of Rs.10, 000/- with one surety of the like amount to the satisfaction of the Arresting Officer. The petitioner Neeam Acharya shall join the investigation but concerned Investigating Officer shall interrogate petitioner Neelam Acharya a woman, strictly in accordance with law. The petitioner Neelam Acharya shall not hamper the investigation and tamper with the prosecution witness.

8. The observations made in the order shall not be construed as expression of opinion on the merits of the case.

9. In view of above CR.MP(M) No.29 of 2009 is dismissed and Cr.MP(M) No.30 of 2009 is allowed as indicated above.

Copy Dasti on usual terms

(Kuldip Singh)
Judge.

January 30, 2009
(sks)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P(M) No. 30 of 2009.

Date of decision: 30.1.2009

Neelam Acharya

.....Petitioner.

Vs.

State of H.P.

.... Respondent.

Coram

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

Whether approved for reporting?

For the petitioner : Mr. Naresh Kaul, Advocate

**For the Respondent : Mr. A.K. Bansal, Addl. Advocate
General.**

Kuldip Singh, Judge (oral).

**For judgment see judgment of today rendered in Cr.M.P(M) No.
29 of 2009 titled Kuldeep Acharya vs. State of H.P.**

**(Kuldip Singh)
Judge**

**January 30, 2009
(sks)**