

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P(M) No. 906 of 2012.

Date of decision: 28.9.2012.

Dharmender Singh son of Sh. Inder Dev Yadav resident of Naika Mahin Jhunsi, P.O. & PS Jhunsi, Tehsil Pulpur District Allahabad, U.P.

.....Petitioner.

Vs.

State of Himachal Pradesh

..... Respondent.

Coram

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

Whether approved for reporting? No

For the petitioner : Mr. Hamender Chandel, Advocate.

For the Respondent : Ms. Ruma Kaushik, Addl. Advocate General.

Kuldip Singh, Judge (Oral).

This is an application, under section 439 Cr.P.C., for releasing the petitioner on bail in FIR No. 2/12 dated 7.1.2012, registered at Police Station, East Shimla, under section 420 IPC.

2. It has been stated that above case has been registered at the instance of Gobind Singh. The allegation is that complainant has been cheated by a Financing company, namely Chirag Corporation, Allahabad, which promised the complainant the sanction of loan without guarantee. The petitioner was arrested on 12.7.2012 in the above case. The petitioner is innocent, he has been falsely implicated in the case. The petitioner himself is a victim of larger conspiracy. The investigating agency has not investigated the matter properly. The real culprits have not been nabbed. The petitioner has

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

been made scapegoat. The family of the petitioner consists of his parents, wife, two minor sons aged four years and half year. The petitioner is the sole bread earner of the family.

3. The investigation in the case is complete and the custody of the petitioner is not required for any purpose. The petitioner earlier moved an application, which has been dismissed by the learned Sessions Judge, Shimla on 18.8.2012. The challan has been filed in the court. The submission has been made for releasing the petitioner on bail.

4. The status report has been filed. It has been stated that on 7.1.2012, the complainant came to the police station and submitted an application. It has been stated that complainant was in need of money for his business. On 27.8.2011, the complainant read an advertisement in Divya Himachal newspaper for providing loan without guarantee. In the advertisement contact number was also mentioned.

5. The petitioner contacted the contact number mentioned in the advertisement. This was attended by one Ms. Pooja, she explained the procedure of loan financing in detail and assured the complainant that Chirag Corporation is a large financing company in Allahabad. Ms. Pooja made several calls to undersigned regarding the loan. The complainant opted to avail the opportunity of obtaining loan. Ms Pooja asked the complainant to send some documents. The complainant on 1.9.2012 sent these documents.

6. Ms. Pooja contacted the complainant on phone and told that loan of ₹5,00,000/- would be sanctioned very soon. Ms. Pooja

told that ₹2500/- processing fee was to be deposited in cash. Ms. Pooja advised the complainant to deposit the said amount in bank account No. 31779337530 of State Bank of India. The complainant deposited ₹2500/- on 1.9.2011 in the said account in favour of Dharmender Singh holder of aforesaid account.

7. Thereafter Rakesh Kumar rang up the complainant for the approval of the applied loan. On 3.9.2011 complainant received loan offer letter through E-mail, which was sent by Rakesh Kumar. On 6.9.2011 complainant was asked to deposit ₹5515/- as processing fee in the account of Dharmender Singh. Rakesh Kumar then asked the complainant to deposit ₹25,000/- margin money. The complainant deposited ₹20,200/- and ₹5000/- in the account of Dharmender Singh.

8. Rakesh Kumar disclosed on 14.9.2011 that ₹2,50,000/- would be deposited in the bank account of complainant and the remaining amount will be paid later on. However, no such amount was deposited in the bank account of the complainant. On 15.9.2011, Rakesh Kumar demanded ₹6,000/- as legal expenses. This was not deposited by the complainant but he asked the refund of ₹33215/-. He made several calls to Rakesh Kumar, who gave only false assurances. After some time the mobile number of Rakesh Kumar was not attended by anyone.

9. The complainant has stated that he has been cheated and amount of ₹33215/- has been grabbed from him by misrepresentation. On this case has been registered. It has been stated that bank account in which the complainant had deposited the

money is of the petitioner. The petitioner was not earlier found on the address given. He was arrested on 12.7.2012 from his village in Jhunsi. The petitioner during investigation disclosed that he was asked to open the bank account and ATM. The challan has been prepared on 28.8.2012 and has been submitted in the court on 15.9.2012. The submission has been made for rejection of bail application.

10. Heard and perused the record. The learned counsel for the petitioner has submitted that petitioner himself is a victim of larger conspiracy. He has submitted that petitioner is innocent, he has committed no offence. The petitioner was asked by his employer to open the bank account. It appears some employees of Chirag Corporation allegedly gave the account number of the petitioner in which some amounts were allegedly deposited, but there is no allegation that such amounts were deposited by the complainant at the instance of the petitioner. It has been submitted that investigation in the case is complete, no purpose will be served for keeping the petitioner in custody for indefinite period. The challan has already been submitted in the court.

11. It has been submitted on behalf of the respondent that it is a clear case of conspiracy between the petitioner and his employer. The various amounts were deposited in the account of petitioner. He permitted his employer to operate his account. The petitioner in connivance with his employer has cheated the complainant. The petitioner has been arrested with great difficulty, in case he is

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released on bail, he will flee away from justice and will not be available for trial.

12. The petitioner was trapped by an advertisement in a newspaper of granting loan without any guarantee. On one pretext or the other the complainant was asked to pay some amount. He paid ₹33215/-, but no loan amount was paid to the complainant. The complainant deposited the amount in the account of petitioner. There is no explanation from the petitioner where those amounts have gone. There is substance in the submission of the learned Addl. Advocate General that in case the petitioner is released on bail, he will not be available for trial. There is no merit in the petition, hence the same is dismissed. Any observation made hereinabove shall not be construed as an expression of opinion over the merits of the case.

September 28, 2012.
(Hem)

(Kuldip Singh),
Judge.