

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr. MP(M) No. 11733 of 2013

Date of Decision : November 29, 2013

Hazara Singh	Versus	...Petitioner
State of Himachal Pradesh		...Respondent

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? No.

For the petitioner : Mr. V. B. Verma, Advocate, for the petitioner.

For the respondent : Mr. R.S. Verma, Addl. Advocate General and Mr. J. S. Guleria, Asstt. Advocate General for the respondent/State.

For the complainant : Mr. Karan Singh Kanwar and Mr. Naresh Sharma, Advocates, for the complainant.

Sanjay Karol, J. (Oral)

SI-Onkar Singh, Incharge, C.I.D. Unit Hamirpur, is present alongwith record. Record perused and returned. Status report filed and taken on record in Cr.MP(M) No. 11730 of 2013.

2. F.I.R. No. 15/13 was registered at Police Station, C.I.D. Bharari, Shimla, H.P., on 9.7.2013, under the provisions of Sections 341, 147, 188, 384 and 506 of the Indian Penal Code. Apprehending arrest, petitioner approached this Court, seeking bail under the provisions of Section 438 of the Code of Criminal Procedure. On

Whether reporters of Local Papers may be allowed to see the judgment?

18.11.2013 this Court passed an interim order, directing that in the event of arrest, petitioner shall be enlarged on bail, subject to his complying with the conditions imposed therein. The said interim order is in operation till date.

3. It is the allegation of the prosecution that petitioner alongwith his co-accused are collecting money, which is commonly known as "*Gunda Tax*", contrary to the provisions of law. Petitioner(s) refutes this allegation. In fact, one of the petitioners is a government employee.

4. It be also observed that in CWP No. 4166 of 2012, titled as *Kamlesh Kumar vs. State of H.P. & others*, in relation to collection of the very same "*Gunda Tax*", the Superintendent of Police Hamirpur, has filed an affidavit that such collection is not by way of tax, but voluntary donations by members of the Society.

5. Be that as it may, the fact of the matter is that F.I.R. was registered on 9.7.2013. It is not the case of the police that thereafter, petitioner and his other co-accused have made any collection from the transporters. It is also not the case of police that petitioner(s) have not cooperated during investigation. According to the police, copies of receipts of payments allegedly received by the petitioner(s) have not been handed over to the police. Whereas, according to the petitioner(s) entire record stands seized by the Superintendent of Police, Hamirpur and there is nothing in their possession. Learned counsel for the petitioner(s) clarifies that except for one register there is no record of the society available

with them. Petitioner(s) shall hand over this register to the Investigating Officer.

6. Having perused the record as also heard the learned counsel for the parties, I am of the considered view that *prima facie* petitioner has made out a case for grant of bail. His custodial interrogation is not required at all.

7. This Court has taken into account the nature of accusation, the severity of punishment in case of conviction and the material so far collected by the prosecution during investigation. I am of the considered view that there is no apprehension made out by the State that in the event of the petitioner being enlarged on bail, he would tamper with the witnesses or extend any threats to the complainant. There is no probability of the petitioner abusing his liberty nor would he interfere or in any manner impede with the course of justice. Petitioner is also not likely to flee from justice. He, through his learned counsel, undertakes to make himself available during the course of investigation, if required, as also during trial, if any.

8. Having taken into consideration the overall attending circumstances, the petitioner has been able to show that there is reason to believe that the threat of arrest is imminent.

9. For all the aforesaid reasons, the interim order dated 18.11.2013 is made absolute. The petitioner shall be on bail till such time challan is presented in the Court for trial where after he shall approach the Court for regular bail, in accordance with law.

Needless to add, during this period petitioner shall fully comply with all the statutory conditions laid down under the provisions of Section 438 of the Cr.P.C. As a matter of abundant caution, it is clarified that petitioner shall neither tamper with the evidence nor try to influence the witnesses. He shall make himself available for investigation as and when required by the investigating officer.

10. Petitioner shall also make himself available for investigation in the office of C.I.D. Hamirpur, on 2.12.2013 at 10.a.m. He shall not leave the country without the prior permission of the Court.

11. Any observation made herein above 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 herein above.

With the aforesaid observations, present petition stands disposed of.

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**(Sanjay Karol),
Judge.**

November 29, 2013 (PK)