

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (Crl.) No. 1545 of 2017

Shyamal Sarkar.

.....Petitioner

Versus

State of Uttarakhand & others.

...Respondents

Mr. Vikas Anand, Advocate for the petitioner.

Mr. Lalit Miglani, Brief Holder for the State of Uttarakhand.

Dated: 22nd September, 2017

Hon'ble V.K. Bist, J.

This petition has been filed by the petitioner seeking the following relief:

“i) Issue a writ, order or direction in the nature of certiorari to quash the F.I.R. dated 15.09.2017 under Sections 2, 39, 44, 50, 51 & 57 of the Wild Life (Protection) Act, 1972 registered at Police Station Sitarganj, District Udham Singh Nagar, as against the petitioner.”

2. Allegation against the petitioner in the F.I.R. lodged by the respondent no.4 (complainant) is that, on 14.09.2017 at about 09:00 a.m., information was received from an informant. On the basis of information, Forest Officers reached on the spot and arrested one person, namely, Lucky Dhali from whose possession one bag including two live turtles and a red colour Splendor Motorcycle was recovered. It is also stated in the F.I.R. that the petitioner herein fled away from the spot.

3. Learned counsel for the petitioner submitted that there is no recovery from the possession of the petitioner and the offences are triable by Magistrate. He submitted that allegations made against the petitioner in

the impugned F.I.R. are totally false and, therefore, protection should be granted to the petitioner. He also submitted that direction may also be issued to the concerned Investigating Officer to comply the provision of Section 41 Cr.P.C.

4. Learned Brief Holder vehemently opposed the writ petition. He submitted that though the petitioner is not named in the F.I.R.; but, from the perusal of the impugned F.I.R., offence is clearly shown. He submitted that allegation made against the petitioner is serious in nature. Therefore, interim relief should not be granted to the petitioner and the writ petition filed by him deserves to be dismissed at the threshold. He also submitted that in case some credible evidence is found against the petitioner, in that event, before taking further action, the Investigating Officer will comply the provision of Section 41 Cr.P.C. and will give notice to the petitioner.

5. I have considered the submission advanced by the learned counsel for the parties and have perused the papers available on record.

6. The Hon'ble Apex Court, in the case of **State of West Bengal. Vs. Swapna Kumar, 1982 (1) SCC 561**, has held that if an offence is disclosed, Court will not normally interfere with the investigation into the case, and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the Court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

7. I have considered the submission of learned counsel for the parties and gone through the contents of F.I.R. Contents of F.I.R. disclose offence and it is for the Investigating Officer to investigate the case and, thereafter, either to file charge sheet or final report in the matter. It is not a fit case, where the High Court should interfere in this criminal writ petition moved under Article 226 of the Constitution of India. Consequently, the writ petition is closed.

8. Interim relief application (CLMA No.12122 of 2017) stands rejected.

9. Learned counsel for the petitioner then submitted that in case offence is made out against the petitioner, in that event, the petitioner will surrender before the Court concerned and will move the bail application and the Court concerned may be directed to decide his bail application same day. Considering the submission of learned counsel for the petitioner, it is directed that in case petitioner surrenders and move bail application, the same shall be decided by the concerned Court very very expeditiously, in accordance with law.

(V.K. Bist, J.)

22.09.2017

Arpan