

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 239 of 2020

Date of Decision: February 29, 2020

Ashwani Kumar Dutta

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹ No.

For the petitioner : Mr. Anoop Rattan, Advocate, vice Mr. Rajesh Kashyap, Advocate, for the petitioner.

For the respondent : Mr. Nand Lal Thakur, Addl. A.G. and Mr. Rajat Chauhan, Law Officer for the respondent/State.

Anoop Chitkara, Judge. (oral)

The petitioner, who is under arrest, on being arraigned as accused in FIR Number 01 of 2020, dated Feb 01, 2020, registered under Section 7 of the Prevention of Corruption Act, 1988 (after now called as PC Act), in Police Station SV & ACB Shimla, HP, disclosing non-bailable offences, has come up before this Court under Section 439 CrPC, seeking regular bail.

2. Status report stands filed. I have seen the status report(s) as well as the Police report under Section 173(2) CrPC, to the extent it was necessary for deciding the present petition, and heard learned Counsel for the parties.

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

3. Prior to the present bail petition, the petitioner had filed a petition under Section 439 CrPC, before the Special Judge (CBI), Shimla, HP. However, vide order dated Feb 12, 2020, the same was dismissed.

FACTS

4. The gist of the First Information Report and the investigation is that complainant Pushpender Verma made a complaint to SP, SV & ACB, Shimla for taking suitable action against Ashwani Dutta, petitioner herein, for demanding bribe in lieu of clearing pending bills and also to make up the demanded reward @ 2% for the bills already paid. Allegedly a sum of rupees seventeen thousand was demanded for which the petitioner had asked the complainant to come to his office with the money. After preliminary inquiry, a case under Section 7 of the Prevention of Corruption Act was registered against the petitioner. Thereafter trap was laid and accused was caught for taking bribe of rupees seventeen thousand from the complainant. Subsequently the police party also complied with the procedural requirements under the CrPC and arrested the petitioner.

ANALYSIS AND REASONING:

5. Pre-trial incarceration needs to be justified depending upon the heinous nature of the offence, terms of the sentence prescribed in the Statute for such a crime, accused fleeing from justice, hampering the investigation, and doing away with witnesses. The Court is under the Constitutional obligation to safeguard the interests of the victim, the accused, the society, and the State.

6. Mr. Nand Lal Thakur, learned Addl. Advocate General, on instructions received from Inspector Balwant Singh, Investigating Officer, Police Station (SV & ACB) Shimla, who is present in the Court, states that they need further time in this petition because

the Investigating Officer is proposing to conduct investigation of the entire assets of the bail petitioner and his family members so as to ascertain whether the same are proportionate to his known sources of income. He further states that in view of this, the present petition be taken on some other date. However, since this FIR is dated Feb 1, 2020 and in case the bail petitioner is released on bail, it would rather facilitate in such inquiry instead of becoming an impediment. Moreover, as far as the present case is concerned, the amount involved is rupees seventeen thousand and the petitioner is in judicial custody for around one month, as such, further incarceration may not be appropriate at this stage.

7. Given the above reasoning, in my considered opinion, the judicial custody of the petitioner/accused is not going to serve any purpose whatsoever, and I am inclined to grant bail on the following grounds, but subject to stringent conditions:

- a) The investigation is almost complete.
- b) The petitioner/accused is in judicial custody since Feb 01, 2020.
- c) The petitioner is a permanent resident of the address mentioned in the memo of parties, as such presence can always be secured.
- d) The petitioner has no criminal history.

8. Consequently, the present petition is allowed. The petitioner/accused shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing personal bond in the sum of INR 10,000/- (Rupees ten thousand) with two sureties in the like amount, to the satisfaction of the Trial Court/Sessions Judge/Additional Sessions Judge, Shimla, HP.

9. The Court executing the personal and surety bonds shall ascertain the identity of the bail-petitioner, his family members, and of sureties, through AADHAR Card, Pan

Card, Ration Card, etc. The petitioner shall mention phone numbers and other details, on the reverse page of the bonds.

10. The Counsel for the accused and the attesting official shall explain all conditions of this bail to the petitioner.

11. This Court is granting the bail, subject to the conditions mentioned herein. The petitioner/accused undertakes to comply with all directions given in this order, and the furnishing of bail bonds by the petitioner/accused is acceptance of all such conditions:

- a) The petitioner shall appear before the Court which issues the summons or warrants, and shall furnish fresh bail bonds to the satisfaction of such Court, if such Court directs to do so.
- b) The petitioner undertakes to attend the trial.
- c) The petitioner shall join the investigation as and when called by the Investigating Officer. However, whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the accused shall not be called before 9 AM and shall be let off before 5 PM.
- d) The petitioner shall co-operate in the investigation.
- e) The petitioner shall not hamper the investigation.
- f) The petitioner undertakes not to threaten or browbeat or use any pressure tactics on the victims, complainant, and witnesses,
- g) The petitioner shall neither influence nor try to control the investigating officer, in any manner whatsoever.
- h) The petitioner undertakes not to make any inducement threat or promise, directly or indirectly, to the investigating officer or any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- i) In case the petitioner commits any offence prescribing the sentence of imprisonment of more than seven years, within thirty days of knowledge of such FIR, the petitioner shall intimate SHO of the present police station, with all the details of the present FIR as well as the new FIR. In such a situation, it shall be open for the State to apply to this Court for cancellation of this bail, if it deems fit and proper.

j) Within 30 days from today, the petitioner shall sell, or surrender, all firearms along with ammunition, and arms licenses, if any, to the authority which had given such permission.

k) Apart from above, in case the Petitioner does not turn up before the Trial Court, then the trial Court may issue Non-Bailable warrants and send the petitioner to the Judicial Custody for the period for which the presence of the petitioner cannot be dispensed with. If the petitioner violates any other condition(s) as stipulated in this bail order, then the Trial Court may direct the Public Prosecutor to file a cancellation application before it and it shall be lawful and permissible for the Trial Court to cancel the bail.

12. This order of bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the petitioner.

13. In case the petitioner finds the bail condition(s) as violating fundamental or other right, or any human right, or faces any other difficulty due to any condition, then, the petitioner may file a reasoned application for modification of such term(s).

14. The present bail order is only for the FIR mentioned above. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the petitioner.

15. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

16. Petition stands allowed in the terms mentioned above.

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**(Anoop Chitkara),
Judge.**

February 29, 2020 (PK)