

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MP(M) No.: 491 of 2020**

**Decided on: 30.04.2020**

Rohit Sharma

.....Petitioner.

Vs.

State of Himachal Pradesh

.....Respondent.

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**Coram:**

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge***

***Whether approved for reporting?<sup>1</sup> No.***

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For the petitioner:

Mr. Satyen Vaidya, Senior Advocate, with  
Mr. Ajay Kochhar, Advocate, through  
Video Conferencing.

For the respondent:

Ms. Ritta Goswami, Additional Advocate  
General, with Mr. Gaurav Sharma,  
Deputy Advocate General, through Video  
Conferencing.

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**Ajay Mohan Goel, Judge** (Oral) :

By way of this petition filed under Section 439 of the Code of Criminal Procedure, the petitioner has prayed for grant of regular bail in FIR No. 14/2020, dated 10.02.2020, registered under Sections 109, 120-B, 188, 307, 341 & 427 read with Section 34 at Police Station Sadar, District Solan, H.P.

2. The allegation against the petitioner is that co-accused in the FIR mentioned hereinabove, with an intent to commit the offence in issue, had stayed in Home Stay, i.e., Nagali Home Stay, which is being

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<sup>1</sup>***Whether the reporters of the local papers may be allowed to see the Judgment?***

run by the accused from 4<sup>th</sup> February, 2020 up to 9<sup>th</sup> February, 2020 and though the accused was aware of the purpose of their stay, yet he facilitated their stay and, thus, also facilitated the co-accused in the commission of the offence. Further allegation against the petitioner is that the factum of the accused staying at his home stay was concealed by him from the Police and relevant entries were not made in the Visitors Book.

3. The FIR in issue was registered on 10.02.2020 and the petitioner was arrested on 20.02.2020. He remained in Police custody up to 24.02.2020 and since then, he is in judicial custody.

4. Mr. Satyen Vaidya, learned Senior Counsel appearing for the petitioner has argued that the petitioner is not guilty of the offences alleged against him. As per him, the Home Stay in issue is being run by the petitioner legally and there was no concealment of the factum of the principal accused staying in the said Home Stay, as has been alleged by the prosecution. Mr. Vaidya has further argued that the petitioner belongs to the State of Himachal Pradesh. He is a resident of District Shimla. His entire family is residing in District Shimla. He belongs to a respected family. It is for the purpose of earning his livelihood that he has taken up a property on lease in the adjoining District, i.e., District Solan, where he is running a Home Stay. He further submitted that it was evident from the record that the petitioner is in judicial custody since 24.02.2020, which implied that no recovery etc.

has to be made from the petitioner. In these circumstances, he has prayed that taking into consideration the allegations alleged against the petitioner, he be released on bail by imposing such conditions as the Court may deem fit.

5.                   Opposing the prayer so made by the petitioner, learned Additional Advocate General has argued that it is apparent from the investigation which has been carried out that the petitioner was knowing fully well as to why the main accused had come to the Home Stay, yet he facilitated their stay in his Home Stay by fabricating the record and, thus, helped them in the commission of the offence. She has also argued that the petitioner otherwise was acquainted with the co-accused, which is evident from the fact that earlier also, one of the co-accused had stayed in the Home Stay of the petitioner in the year 2017 and then also, he had committed an offence in District Solan. She also argued that taking into consideration the fact that the petitioner happens to be a localite, as he is running his business in District Solan, there is a possibility that in case he is ordered to be released on bail, he may tamper with the evidence. She has thus argued that taking into consideration the seriousness of the offence alleged against the petitioner, he should not be released on bail and alternatively, in case the Court intends to grant bail to the petitioner, then stringent conditions should be imposed upon him.

6.                   Learned Senior Counsel for the petitioner while rebutting the submissions made by learned Additional Advocate General,

has stated that though one of the accused had stayed in the Home Stay of the petitioner in the year 2017, but it is a matter of record that the petitioner is not an accused in any other case.

7. I have heard learned Senior Counsel for the petitioner as well as learned Additional Advocate General for the State and have also gone through the record appended with the petition as well as status report filed on behalf of the State.

8. It is evident from the perusal of the record that the petitioner after his arrest on 20.02.2020, is in judicial custody since 24.02.2020. The allegation against the petitioner is that he has previous acquittance with the co-accused Sohan Singh @ Sonu and he had facilitated the stay of the co-accused in his Home Stay knowing fully well their intention. Further allegation against him is that he had failed to make necessary entries in the Visit Book with regard to the Stay of the accused persons w.e.f. 04.02.2020 to 09.02.2020.

9. It is not in dispute that as of now, no further recoveries are to be made from the petitioner. Whether or not the petitioner is guilty of the offence alleged against him, is a matter of trial. At this stage, it will be in the interest of justice in case this Court refrains itself from making any comment in this regard. Similarly, whether or not the alleged non-entries in the Visitors' Book regarding stay of the accused persons were made with a criminal intent or otherwise, is also a matter of trial and the same shall be looked into by the concerned Court at the time of trial.

However, on the basis of these allegations, no purpose shall be served by detaining the petitioner in custody. It is not the case of the State that the petitioner is a habitual offender. It has not been denied that the petitioner is a permanent resident of Himachal Pradesh and is running a Home Stay in District Solan to earn his livelihood. As far as the apprehension of the State that the petitioner may try to win over the witnesses or try to hamper the course of trial is concerned, the same can be taken care of by the Court by imposing stringent conditions upon the petitioner. The gravity of the accusations against the petitioner has also to be co-related with danger of accused absconding or fleeing, if released on bail and also his character, behaviour, means and his standing as also the likelihood of the offence being repeated by him. During the course of arguments, learned Additional Advocate General has not been able to substantiate that there is either any danger of the accused absconding or fleeing, if released on bail or that his character, behaviour etc. was extremely doubtful or that there was any likelihood of the offence being repeated by him.

10. Accordingly, this bail petition is allowed and the petitioner is ordered to be released on bail on his furnishing personal bail bond of Rs.50,000/- with one surety in the like amount to the satisfaction of learned Chief Judicial Magistrate, Solan, H.P. The grant of bail is subject to the following conditions:

“(a) Petitioner shall attend the trial on each and every date of hearing;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Office;

(d) In the peculiar facts of the case, it is further ordered that the petitioner shall not leave the territorial boundaries of Districts Shimla and Solan without previous permission of the learned Court concerned; and

(e) In the event of the petitioner indulging in winning the witnesses over or thwarting the course of justice by virtue of grant of bail in his favour, the State shall be at liberty to approach this Court for cancellation of the bail granted to the petitioner.”

11. The petition stands disposed of with one clarification that the observations which have been made by this Court in the present order are only for the purpose of adjudication of the present bail petition

filed by the petitioner and shall have no bearing on bail petitions, if any, filed by the co-accused.

Authenticated copy by way of e-mail in view of imposition of curfew/lockdown on account of Corona-virus epidemic.

**(Ajay Mohan Goel)**  
**Judge**

**April 30, 2020**  
(bhupender)