

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP(M) No. 193 of 2023

Decided on : 27.01.2023

Naresh Kumar

...Applicant

Versus

State of Himachal Pradesh

...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Vacation Judge.

Whether approved for reporting?¹

For the applicant : Mr. Romesh Verma, Senior Advocate,
with Ms. Shruti Sharma, Advocate.

For the respondent : Mr. H.S. Rawat, Additional Advocate
General, with Ms. Seema Sharma,
Deputy Advocate General.

HC Deepak No. 03, Police Station
Chirgaon, District Shimla, H.P.,
present in person, with police record.

Virender Singh, Vacation Judge. *(Oral)*

Applicant-Naresh Kumar has filed the present application, under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC'), before this Court, with a prayer, to direct the police/Investigating Officer

¹ *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

of Police Station Chirgaon, District Shimla, to release him on bail, in the event of his arrest, in case FIR No. 06 of 2023, dated 20th January, 2023, registered under Section 379 of the Indian Penal Code (hereinafter referred to as 'IPC') and Sections 32 and 33 of the Indian Forest Act, with Police Station Chirgaon, District Shimla, H.P.

2. According to the applicant, he belongs to a respectable family and is serving in the Forest Department, for the last fifteen years. The applicant has given the details of his posting, at various stations, in order to show that some of the persons were having inimical relations with him and nourished a grudge against him and, as such, they got registered the FIR in question against him, just to defame him.

3. The applicant has termed all the allegations, which have been levelled against him, as false, while giving the explanation that he is the member of the joint family and he and his brother want to construct separate houses, over the land, owned and possessed by the applicant, alongwith his brother and two sisters. The timber, which was allegedly shown to be recovered, was stacked by the applicant,

alongwith his brother, was prepared, out of the trees standing on the land, owned and possessed by them.

4. Apart from this, the applicant, through his counsel, has given certain undertakings, for which, he is ready to abide by, in case any order is passed, under Section 438 CrPC.

5. On the basis of the above facts, a prayer has been made by the learned counsel appearing for the applicant, that the application may kindly be allowed.

6. When put on notice, the police filed the status reports. In the status report, which was filed on 24th January, 2023, the police has mentioned the following facts:

“It has been reported by Forest Guard Sh. Anshul Sharma I/C Todsa beat that during his patrolling to UF Amboi and UF Jailot on Dated 17.01.2023 day time he saw 12 stumps of Kail trees of different class in UF Amboi illicitly felled by some unknown person. Inquiry was made by Forest Guard Sh. Anshul Sharma and it transpires that this illicit felling was done by Sh. Naresh Kumar. Forest Guard tried to contact Mr. Naresh Kumar and he told to Sh. Anshul Sharma that these trees were felled by him from his own private land. As he is out of area and unable to produce and legal documents. Forest Guard Sh. Anshul Sharma further reported that he could not record this statement due to his absence, Forest Guard Sh. Anshul Sharma during this course of action also inspected the UF Jailot and found two stumps of Kail trees illicitly felled and these trees also reported illicitly felled by Mr. Naresh Kumar. Timbers of the both case have been lifted by accused Naresh Kumar. DR No 57/200

dated 17.01.2023 and 58/200 dated 17.01.2023 under section 16 of LPA, 1978 and 32 and 33 FIA, 1927 stand issued by beat Guard concerned against Accused Sh. Naresh Kumar and copy of same is enclosed herewith for kind perusal. Report of the BO Todsa and beat Guard concerned is also enclosed herewith for ready reference. Market value of the trees is Rs. 1788400/- (1324650+ 463750). Therefore, it is requested that necessary FIR may kindly be lodged against accused Naresh Kumar above after due inquiry and initiate legal proceedings against accused person.”

7. On the basis of the above facts, FIR in question has been registered and the investigation, was then, entrusted to HC Deepak Kumar, No. 03.

8. During investigation, the forest area adjoining to Villages Amboi and Jailot was inspected and during inspection, the stumps of 14 trees were found. Those stumps were photographed. Efforts were made to contact accused Naresh Kumar (applicant). He was directed to join the investigation, but, has not joined the same. Thereafter, the ground floor of the house of the applicant was searched, in the presence of independent witnesses. On the ground floor, four rooms were found and in those four rooms, 137 slippers of kail wood and 32 slippers of cedar wood were found. The cost of the same has been stated to be ₹ 8,87,502/-. The recovered slippers were taken into possession, pieces of the same were

separated as sample and were sent to State Forensic Science Laboratory, Junga.

9. According to the police, the area is yet to be demarcated, from where, those trees were found to be cut.

10. As per the first status report, filed on 24th January, 2023, the recovery of other wood is yet to be effected from the applicant.

11. Thereafter, the case was adjourned for 27th January, 2023 and while giving interim protection, the applicant was directed to join the investigation.

12. Today, the police has filed the supplementary status report, disclosing therein, that the applicant, although, has joined the investigation and has been released on bail, as per the direction of this Court, however, he is not giving the exact information, as to why, the slippers were stacked, in his residence.

13. Lastly, it has been stated, in the status report, that the applicant himself is working as Forest Guard in the Forest Department and was posted in Forest Beat, Kharshali, as such, he is having the knowledge of legal position and, thus,

has committed the offence and, therefore, there is resentment against him in the area.

14. On the basis of the above facts, a prayer has been made to dismiss the application.

15. The role, allegedly played by the applicant, in the commission of the alleged crime, is yet to be proved during the trial, and, by way of these status reports, the police is unable to make out a case for custodial interrogation.

16. As directed by this Court, the applicant has joined the investigation. No useful purpose would be served by sending the applicant to the police/judicial custody, as, pre-trial punishment is prohibited under the law. The accused is presumed to be innocent till his guilt is proved after the trial. The commencement and conclusion of the trial against the applicant will take sufficiently long time, as such, no useful purpose would be served by rejecting the application.

17. As stated above, the police has not been able to make out a case for custodial interrogation of the applicant, in this case. Even otherwise, if the interim order is made absolute, then, a direction would be issued to the applicant to

join the investigation, as and when, directed by the Investigating Officer, to do so.

18. So far as the question of getting the alleged recovery effected from the accused, is concerned, for that purpose, applicant will be deemed to be in custody, when, he will join the investigation. While holding this, the view of this Court is guided by the decision of Hon'ble Supreme Court in **Shri Gurbaksh Singh Sibbia & others versus State of Punjab**, reported in (1980) 2 Supreme Court Cases 565.

For the sake of ready reference, relevant para of the judgment (supra), is extracted hereunder:

“19. A great deal has been said by the High Court on the fifth proposition framed by it, according to which, inter alia, the power under Section 438 should not be exercised if the investigating agency can make a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. According to the High Court, it is the right and the duty of the police to investigate into offences brought to their notice and therefore, courts should be careful not to exercise their powers in a manner which is calculated to cause interference therewith. It is true that the functions of the judiciary and the police are in a sense complementary and not overlapping. And, as observed by the Privy Council in King-Emperor v. Khwaja Nazir Ahmed [(1943-44) 71 A 203: AIR 1945 PC 18 : 46 Cri LJ 413]:

Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of

the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry The functions of the judiciary and the police are complementary, not overlapping, and the combination of the individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, . . .

But these remarks, may it be remembered, were made by the Privy Council while rejecting the view of the Lahore High Court that it had inherent jurisdiction under the old Section 561-A, Criminal Procedure Code, to quash all proceedings taken by the police in pursuance of two first information reports made to them. An order quashing such proceedings puts an end to the proceedings with the inevitable result that all investigation into the accusation comes to a halt. Therefore, it was held that the Court cannot, in the exercise of its inherent powers, virtually direct that the police shall not investigate into the charges contained in the FIR. We are concerned here with a situation of an altogether different kind. An order of anticipatory bail does not in any way, directly or indirectly, take away from the police their right to investigate into charges made or to be made against the person on bail. In fact, two of the usual conditions incorporated in a direction issued under Section 438(1) are those recommended in sub-section (2)(i) and (ii) which required the applicant to cooperate with the police and to assure that he shall not tamper with the witnesses during and after the investigation. While granting relief under Section 438(i), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery. Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a

discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya [(1961) 1 SCR 14, 26: AIR 1960 SC 1125: 1960 Cri LJ 1504] to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed so have surrendered himself to the police. The broad foundation of this rule is stated to be that Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. For similar reasons, we are unable to agree that anticipatory bail should be refused if a legitimate case for the remand of the offender to the police custody under Section 167(2) of the Code is made out by the investigating agency.”

19. Considering all these facts, interim order, dated 24th January, 2023, is liable to be confirmed. Consequently, interim order, dated 24th January, 2023, is made absolute. Therefore, it is ordered that the applicant be released on bail, in the event of his arrest, in case FIR No. 06 of 2023, dated 20th January, 2023, registered under Section 379 IPC and Sections 32 and 33 of the Indian Forest Act, with Police Station Chirgaon, District Shimla, H.P., on his furnishing personal bond, to the tune of ₹ 20,000/-, with one surety of the like amount, to the satisfaction of the Investigating Officer. The bail is granted, subject to the following conditions:

a) That the applicant will join the investigation of the case, as and when, called for, by the Investigating Officer, in accordance with law;

b) That the applicant will not leave India, without prior permission of the Court;

c) That the applicant will not, directly or indirectly, make any inducement, threat or promise to any person, acquainted with the facts of the case, so as to dissuade him/her from disclosing such facts to the Investigating Officer or the Court; and

d) That the applicant shall regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so seek exemption from appearance by filing appropriate application;

20. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

21. The applicant is directed to move regular bail application, when, charge sheet will be filed, in the learned trial Court.

22. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions, is found to be violated by the applicant.

23. Applicant may produce a downloaded copy of the order, passed by the Court, before the concerned authority/police/Investigating Officer and the said authority/police/

Investigating Officer shall not insist for the certified copy of order, rather, passing of order can be verified from the web-page of this Court.

(Virender Singh)
Vacation Judge

January 27, 2023
(rajni)