

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No.473 of 2012.

Date of decision: 11.06.2012.

Sh.Deep Kumar, s/o Sh. Buadatta, R/o V & PO Bateda, Tehsil & Distt. Jammu(J&K) presently Resident of V&PO Vashisht, Tehsil Manali, Distt. Kullu, H.P.

.....Petitioner.

Vs.

State of Himachal Pradesh.

..... Respondent.

Petition under Section 438 Cr.P.C.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ No

For the Petitioner : Mr. Jiya Lal Bhardwaj, Advocate.

For the Respondent : Ms. Ruma Kaushik, Addl. A.G.
with Mr. Vinod Thakur, Dy.
A.G.

Kuldip Singh, Judge (Oral).

This is an application under Section 438 Cr.P.C. for releasing the petitioner on bail in FIR No.50/2012 dated 10.05.2012 registered at Police Station, Manali, under Sections 406, 380 IPC.

2. It has been stated petitioner is apprehending his arrest in the above noted case. The petitioner is innocent, he has committed no offence, but has been falsely implicated in the case. The learned Sessions Judge, Kullu, initially, granted anticipatory bail to the petitioner, but ultimately his bail application was rejected on 25.05.2012 by observing that it cannot be said that petitioner has been falsely

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

implicated in the case. In addition, petitioner has not co-operated in the investigation and recoveries are yet to be made. In case, the petitioner is released on bail, he may flee from justice or may hamper the investigation or tamper with the evidence. It has been stated that learned Sessions Judge has erred in making observations against the petitioner. It has been stated that petitioner is ready to join the investigation and furnish bail bonds. The submission has been made for releasing the petitioner on bail.

3. The status report has been filed. The case has been registered on the basis of directions of learned Judicial Magistrate Ist Class, Manali, under Section 156(3) Cr.P.C. The complainant Raman Kumar has stated in the complaint that Deep alias Pupa was working as servant/helper with the complainant in the shop. In the absence of complainant, the petitioner was handling the shop. On 07.05.2012, the complainant had gone out of station due to business work and in his absence the petitioner had stolen ₹1,50,000/- in cash, along with T.V., D.V.D. and blankets from the shop. The complainant had come to know this fact later on.

4. The complainant tried to trace out the petitioner, but he could not find him anywhere. The complainant had gone to Police Station, Manali, to lodge the FIR against the petitioner, but the Police did not care for the request of the complainant. On this, the complaint was filed in the court. On the directions of learned Judicial Magistrate, Manali, the case has been registered. The complainant during investigation produced bill book of 'Durga Handloom', showing issuance of bills from Sr. No.131 to 147 amounting to ₹1,14,000/-. It has come in the investigation that petitioner had taken away T.V. and

D.V.D. In the month of March, the complainant had deposited ₹16,000/- in the account of the petitioner, but petitioner did not pay the shop rent.

5. The complainant had gone home in the first week of January and returned in the first week of April and during this period the petitioner was in the shop along with Sushil Kumar. The monthly salary of the petitioner is ₹5,000/-, but transactions in his bank account show that from 06.01.2012 to 29.01.2012 he had withdrawn ₹30,610/-, deposited ₹42,197/- and balance in his account shows ₹12,036/-. As per statement of Sushil Kumar, the petitioner had taken D.V.D. and T.V. in his quarter both valuing ₹3,800/- and an amount of ₹1,30,000/- is to be recovered along with D.V.D. and T.V. The petitioner has not paid ₹15,965/- to the complainant which complainant had paid to the petitioner for payment of shop rent.

6. The petitioner has joined the investigation. The petitioner during investigation has disclosed that he had given ₹5,000/- to his friend for purchasing motorcycle. The petitioner had filed bail application which was dismissed by learned Sessions Judge, Kullu, on 25.05.2012. The Investigating Agency has lastly submitted that recoveries of ₹1,30,000/- D.V.D. and T.V. are to be made. The submission has been made for rejection of the bail application.

7. Heard and perused the record. It has come in the status report that there was one helper Sushil Kumar also in the shop. The complainant had left the shop in first week of January and returned in first week of April, 2012. In the absence of complainant, it appears the shop was run by petitioner and Sushil Kumar. The Investigating Agency has submitted that recoveries of ₹1,30,000/-, D.V.D., T.V. are to be

made from the petitioner. The petitioner was granted interim bail and his bail application was rejected by learned Sessions Judge on 25.05.2012.

8. The Investigating Agency has not placed anything on record that, in fact, ₹1,30,000/-, D.V.D. and T.V. have been concealed by petitioner somewhere and he is not disclosing and co-operating in the recoveries. The case was registered against the petitioner on 10.05.2012 and more than a month is already over. The stand of the petitioner is that he has been falsely implicated and nothing is to be recovered from him nor any part of the case property is with him.

9. It is not the case of the Investigating Agency that petitioner will not be available for trial in case he is released on bail nor it is the case of the Investigating Agency that petitioner is overawing and terrorizing the prosecution witnesses. As per Investigating Agency, the complainant returned to his shop in the first week of April, 2012, but it appears he filed the complaint in the Court against the petitioner on or about 09.05.2012 after about one month. Thus, keeping in view the facts and circumstances of the case, the petitioner has made out a case for grant of bail under Section 438 Cr.P.C.

10. In view of above, petition is allowed. The petitioner in the event of arrest in FIR No.50/2012 dated 10.05.2012 registered at Police Station, Manali, under Sections 406, 380 IPC, be released on bail on his furnishing personal bond in the sum of ₹25,000/- with one surety of the like amount to the satisfaction of the Arresting Officer with the conditions that the petitioner shall continue to join the investigation as and when called by the Investigating Officer and shall not hamper the

investigation and tamper with the prosecution evidence in any manner.

The petitioner shall not overawe, terrorize any prosecution witness.

11. The observations made in this judgment are for disposal of bail petition only and the same shall not be construed as an expression of opinion on the merits of the case.

Copy **Dasti.**

June 11, 2012.
(Krt)

(**Kuldip Singh**),
Judge.