



2025:UHC:4517

HIGH COURT OF UTTARAKHAND AT NAINITAL

Hon'ble Justice Sri Rakesh Thapliyal

23rd May 2025

Bail Application No. 900 of 2025

Pawan Joshi Applicant

Vs.

State of Uttarakhand Respondent

Counsel for the Applicant: Mr. H.C. Pathak, learned counsel

Counsel for the State: Mr. Sandeep Sharma, learned
A.G.A. and Mr. Chitrarth Kandpal,
learned Brief Holder.

(Mr. Rakesh Thapliyal, J.)

1. Present applicant Pawan Joshi, is praying for regular bail in relation to FIR dated 28.08.2025 bearing FIR No. 347 of 2024 lodged at P.S. Kiccha District Udham Singh Nagar in which the present applicant was himself the complaint and he lodged the FIR being Branch Manager of the Bank implicating one of the employee of the bank, namely, Hari Mohan Singh for the offences punishable under Section 316 (5) and 318(2) of BNS 2023.

2. Learned counsel for the applicant submits that in respect of the allegations, as alleged in the FIR, an internal investigation was carried out by the bank wherein a report was submitted on 18.10.2024 in which it is clearly mentioned that the cash was misappropriated by Hari Mohan Singh, the field staff of the bank. This report is also placed on record as Annexure-2 and on perusal of which it reveals that column 2 of the said report pertains to the details of the incident wherein there is reference that perpetrator of fraud is Hari Mohan Singh and not the applicant.



Learned counsel for the applicant submits that while submitting the report of the internal investigation team of the bank one Kaushalya Devi disclosed that the money was given to Hari Mohan Singh and based on that internal investigation, report was submitted.

3. Learned counsel for the applicant submits that in the present FIR the present applicant has also been implicated based on the statement of Kaushalya Devi, however, the investigating officer have not gone through with the internal investigation report of the bank. He further submits that relied upon the statement of the co-accused Hari Mohan Singh the applicant was called by the police at police station and was arrested on 21.04.2025. He submits that marriage of the applicant was scheduled to be held on 10.05.2025 but since the applicant was arrested prior to that ,i.e., on 21.02.2025 by the concerned I.O. without examining the internal investigation report of the bank consequently, the marriage of the applicant was also postponed. He submits that the I.O. concerned in a very haste manner arrested the applicant that too by ignoring the internal investigation report of the bank.

4. On the other side, Mr. Siddharth Bisht, learned A.G.A. opposed the bail application by submitting that since another co-accused Hari Mohan Singh disclosed the name of the applicant, therefore, the applicant was rightly arrested.

5. Be that as it may, certainly the task of the investigation was handed over to the investigating agency of the FIR lodged by the applicant and it is also not disputed that the matter related to the



misappropriation of the money of the bank, therefore, in such an eventuality the I.O. concerned was under legal obligation to go through with the internal investigation report of the bank but it appears that without gone through with the said report, the applicant was arrested in a very haste manner though the investigation is still going on.

6. This Court has observed in so many cases that the investigation are not being carried out in a proper manner and in most of the cases the investigating officers are focusing on the arrest of the person concerned and then proceed with the investigation. This Court also observed that on an incomplete investigation the charge sheet are being filed by giving a reference that part investigation is still pending, and, therefore, the question is whether such charge sheet is a charge sheet in terms of the Section 173 of Cr.P.C. (the corresponding Section 193 of BNSS 2023). Not only this, even this Court also observed that the investigating officers are focusing their investigation only to the contents of the FIR, however, neither the credibility of the complainant nor the genuineness of the complaint are being included in the investigation. The Hon'ble Apex Court is in the case of **Joginder Kumar vs. State of U.P. and others, (1994) 4 SCC 260**, holds that arrest of the person should not be merely on suspicion and arrest should normally be avoided except in heinous crime and the reason of arrest must be recorded by the police officer in his case diary.

In the case of **Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273**, the Hon'ble Apex Court issued



certain guidelines in para 11 which reads as under:-

11. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2 All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

11.3 The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4 The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5 The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6 Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7 Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

7. The directions issued by the Hon'ble Apex Court are certainly binding and it has to be followed strictly but it appears that the directions, as issued, by the Hon'ble Apex Court are not being followed strictly. Apart from this the concerned investigation officer only on completion of investigation should file the charge sheet which in fact is



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the mandate of Section 173 Cr.P.C. (the corresponding section 193 of BNSS 2023) but what this Court observed that on an incomplete investigation by giving reference of part pending investigation charge sheet are being filed so that the person concerned may not get default bail. Even in so many cases without collecting scientific evidence like FSL report, DNA report, ballistic report charge sheet are being filed by giving reference that the same are still awaited.

8. After hearing the arguments of the learned counsel for the parties and further taking into consideration that in the FIR the applicant was himself was the complainant and in the internal investigation report of the bank nothing was found against the applicant and further applicant has no criminal antecedent, this Court is of the view that the applicant deserves for bail.

9. Accordingly, without expressing any opinion on the merits of the case the bail application is allowed.

10. Let the applicant Pawan Joshi be released on bail on his executing a personal bond and furnishing two reliable sureties of the like amount to the satisfaction of the court concerned.

11. Let a copy of this order be sent to the DGP of the State so that he may forward it to his subordinates to strictly follow the guidelines of the Hon'ble Apex Court as observed above.

(Rakesh Thapliyal, J.)

Parul



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