(2024:HHC:15012)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP(M) No. : 2717 of 2024
Reserved on : 12.12.2024
Decided on : 18.12.2024

Naresh Kumar ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

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

Whether approved for reporting?[1]

For the applicant : Mr. Ravinder Singh Chandel, Advocate.

For the respondent : Mr. Lokender Kutlehria, Additional Advocate General, assisted by ASI Brijesh, Police Station Rajgarh, District Sirmaur, H.P.

Virender Singh, Judge

Applicant-Naresh Kumar has filed the present application, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), with a prayer to direct the Police/Investigating Officer of Police Station Rajgarh, District Sirmaur, H.P., to release him on bail, in the event of his arrest, in case FIR No.77 of 2024, dated 27.10.2024, under Sections 126(2), 118(1),

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

115(2) and 109 of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS').

2. According to the applicant, he is innocent person and has falsely been implicated, by the Police, in the present case.

3. As per the applicant, he has nothing to do with the alleged offence, in which, he has been arrayed as accused.

4. According to the applicant, he had earlier filed similar application, before the Court of learned Additional Sessions Judge, Nahan, however, the same was rejected on 30.11.2024.

5. It is the case of the applicant that when, the interim protection was given to him, by the Court of learned Additional Sessions Judge, Nahan, he has joined the investigation and recovery has been effected, in this case and according to him, no useful purpose would be served by sending him to the judicial custody.

6. According to the applicant, he belongs to a respectable family, as such, having deep roots in the society.

7. Apart from this, learned counsel, appearing for the applicant, has given certain undertakings, for which, the applicant is ready to abide by, in case, any direction is issued to the Police/Investigating Officer, under Section 482 of the BNSS.

8. On the basis of the above facts, a prayer has been made to allow the application.

9. When put to notice, the police has filed the status report, disclosing therein, that on 26.10.2024, during night time, one complaint, made by Kapil Dev, son of Shri Ramesh Kumar, was received in Police Post Pajhota, upon which, HC Ravi Dutt, on 27.11.2024 (*sic.*), visited the spot and submitted the complaint to the Police Station through email, in which, complainant-Kapil Dev has deposed that he is resident of Village Pabhech, Post Office Leunana, Tehsil Rajgarh, District Sirmaur, H.P.

9.1. According to the complainant, on 26.10.2024, he, along with his brother Sandeep and father Ramesh Kumar, had gone to attend the marriage of his cousin (maternal uncle's son). When, after attending the Barat, they were on their way to Manuva, then, on the way at

Village Shimliya, Naresh Kumar (applicant) has stopped their vehicle and under intoxication, said Naresh Kumar (applicant), has attacked his brother Sandeep Kumar with Khukhari, upon which, his brother sustained injuries and in a private vehicle, he was taken by his father to Shimla for treatment. As such, he has prayed that action may be taken against the said person.

9.2. On the basis of the abovesaid facts, police registered the FIR in question, and the criminal machinery swung into motion.

9.3. Thereafter, investigation was entrusted to ASI Brijesh Kumar, Incharge Police Post Pajhota. During investigation, the I.O. has recorded the statements of the complainant, as well as, the witnesses, under Section 180 of BNSS, on 7.11.2024, and accused Naresh Kumar (applicant) was associated in the investigation on 08.11.2024. Medico-legal certificate of Sandeep was obtained from Medical Officer, IGMC, Shimla, wherein, the Medical Officer has opined that the kind of weapon, used in the occurrence, is sharp-edged and the injury is

dangerous to life threatening injury, upon which, Sections 118(1) and 109 of BNS were added.

9.4. On the basis of statement of witnesses, the alleged offences did not attracted the provisions of Section 126 of BNS, as such, Section 126(2) of BNS was removed. Efforts to nab Naresh Kumar (applicant) were made, but, he was not found. On 16.11.2024, Naresh Kumar (applicant) has filed the application, under Section 482 BNSS, before the Court of learned Additional Sessions Judge, Nahan, in which interim protection was granted and the applicant was directed to join the investigation by appearing, before the I.O., on 18.11.2024.

9.5. During investigation, on 24.11.2024, Naresh Kumar (applicant) has produced a knife, which was identified by the witness Virender, by saying that the knife can be the same, which has been used in the alleged incident, as, he could not see the same properly, since, there was darkness, at that time, due to the dead hours of the night. Consequently, sketch of the said weapon was prepared and the same was taken into possession. Since the injured, after discharge from IGMC, Shimla, was taken

for treatment at Solan, as such, the said weapon, could not be got identified from the injured on 30.11.2024.

9.6. It has been mentioned in the status report that the bail application, filed under Section 482 of the BNSS, was dismissed by the learned Additional Sessions Judge, Nahan. Thereafter, efforts to nab Naresh Kumar (applicant) were made, but, he could not be arrested.

9.7. As per the case of the police that the brother of applicant-Naresh Kumar has also moved a complaint, on 27.10.2024, mentioning therein that his brother Naresh Kumar (applicant) was beaten by Surender Kumar, Sandeep, Virender and Pradeep Kumar, upon which, FIR No.78 of 2024, dated 27.10.2024, under Sections 126(2), 115(2), and 351(2) of BNS, was registered with Police Station, Rajgarh.

9.8. It is the further case of the police that during investigation, it was found that on 26.10.2024, Kapil, along with his brother Sandeep and others, had gone to a marriage party at Chhindhar (Barog). Naresh Kumar (applicant) had also joined the said marriage party, where, an altercation took place between Kapil, brother of

Sandeep Kumar, and Naresh Kumar (applicant), on account of old domestic dispute to the effect that Naresh Kumar (applicant) had given a foot blow to Kapil, however, the matter was settled by the persons present there.

9.9. It is the further case of the police that after attending the marriage, both the parties were returning back to village Manwa, in their respective vehicles. Near Kaloha 'U' turn, scuffle took place, between Virender and Naresh Kumar (applicant). Thereafter, many persons alighted down from the vehicle and during that scuffle, Naresh Kumar (applicant) has inflicted injuries with a sharp-edged weapon on the lower side of the chest of Sandeep, upon which, injured Sandeep was taken to IGMC, by his brother Surender and others, where, he remained admitted from 26.10.2024 to 04.11.2024.

9.10. According to the police the fact as to whether the weapon, which had allegedly been produced, by applicant-Naresh Kumar, was used in the incident or not, is yet to be ascertained.

9.11. It has also been apprehended that in case, any direction is issued, under Section 482 of BNSS, then, the

applicant may harm the injured or his family members and also coerce the witnesses.

10. After perusing the said status report, on 05.12.2024, interim protection was granted to the applicant with a direction to join the investigation.

11. In the status report, which has been filed on 03.12.2024, in para 4, it has been mentioned that on 18.11.2024, when, the applicant/accused appeared before the Police in Police Station, interim protection was granted to him, by the Court of learned Additional Sessions Judge. He has disclosed that on 26.10.2024, he had gone in the marriage party of his cousin, where, an altercation took place with Kapil and injured Sandeep has stopped them not to fight. When, they were returning back to Manuava and at about 8.30 p.m., applicant, in his pick-up, bearing No.HP16A-2392, along with Kushal and Ajay, reached at Kaloha Kainchi, then, on seeing his brother Rakesh, he has stopped his vehicle. Ramesh, Surender etc., were also present there and vehicle of Surender was also found parked there. When, he had proceeded towards his

brother Rakesh, then, Virender caught him and started giving beatings to him.

12. Learned counsel, appearing for the applicant, has also produced the copy of the status report, which had been filed by the I.O., when the application was pending before the Court of learned Additional Sessions Judge, Sirmaur at Nahan. The said status report has duly been signed by ASI Brijesh Kumar.

13. In the said status report, following facts, which are contrary to the stand, as taken by the Police, in the status report, filed before this Court, have been mentioned:-

> "During investigation, it was found that on 26.10.2024, at about 8.50 p.m., at Kaloha Kainchi, both the parties had a quarrel as both the parties were going to Manuva. Five persons of complainant party reached at Kaloha Kainchi and were waiting for Naresh. On the spot, Rakesh, elder brother of Naresh, was also reached. After 8-10 minutes, Naresh also stopped his vehicle, on seeing his brother Rakesh. When Naresh alighted down from his vehicle, a scuffle took place between Naresh and Virender. Thereafter, Sandeep, Ajay and Rakesh, made efforts to prevent them from quarrel, but few persons were ready to beat Naresh. After 2-3 minutes of the quarrel, Naresh has inflicted knife blow on Sandeep

and the opposite party had also lodged cross FIR No.78 of 2024."

14. In the status report, which has been filed on 11.12.2024, before this Court, the aforesaid facts have not been mentioned.

15. In view of the stand, as taken, in the status report, this Court is of the view that the role, attributed to the applicant, in inflicting injuries to the applicant, will be proved, during the course of trial, as, in the status report, filed before this Court, as well as, in the status report, filed before the Court of learned Additional Sessions Judge, Nahan, different version has been mentioned.

16. Although, this ambiguity will be explained by the I.O., before the learned trial Court, during the trial, but, considering the fact that a cross-FIR has also been got registered, against the complainant/injured party, this Court is of the view that it will be proved during the trial as to which party was aggressor and which party had inflicted the injuries.

17. Moreover, at the time of deciding the bail application, detailed discussions about the case of the

prosecution is not justifiable, as, the same would cause prejudice to the case of the prosecution, as well as, that of the accused.

18. As such, this Court is of the view that the interim protection, granted to the applicant, is required to be made absolute, as, no useful purpose would be served by dismissing the present application, which would result into the judicial custody of the applicant.

19. The applicant had already joined the investigation and got recovered the alleged weapon of offence. The entire status report, filed by the police, is not able to make out a case for custodial interrogation.

20. Learned Additional Advocate General has also failed to satisfy the judicial conscience of this Court, as to what purpose would be achieved by the Police, in case, the interim protection is withdrawn from the applicant, as the same would lead to pre-trial punishment, which is prohibited under the Law.

21. Considering all these facts, the interim order dated 05.12.2024, passed by this Court, is hereby made absolute, 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.*

22. 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 application.

23. The applicant is directed to move regular bail application, when charge sheet will be filed in the Competent Court of Law.

24. 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 violated by the applicant.

25. Before parting with this Order, this Court is of the view that, it is high time for this Court to direct the Principal Secretary (Home) to the Government of Himachal

Pradesh, to issue necessary directions to all the Superintendents of Police in the State, with a further direction to circulate the same amongst all the Investigating Officers, to mention all material facts, found in the investigation, in the status report(s), filed in the Court either during remand or in the bail application, before the learned Judicial Magistrate First Class/learned Additional Sessions Judge/learned Sessions Judge. In order to achieve the said goal, the Investigating Officer of the case is directed to annex the copy of the remand order/status report, filed in the Court previously, at the time of hearing of bail application, so that clear picture could be brought to the notice of the Court, while deciding the question of releasing on bail.

Record be returned to the quarter concerned.

(Virender Singh)
Judge

December 18, 2024 *(ps)*

Digitally signed by RAJNI
Date: 2024.12.18 17:30:05 IST