 2024:HHC:15762

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CrMP (M) No. : 2798 of 2024 a/w
CrMPs (M) No. 2801 & 2802 of 2024

Decided on : 23.12.2024

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1. CrMP (M) No. 2798 of 2024
Akshay Kumar …Applicant

Versus

State of Himachal Pradesh …Respondent

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2. CrMP (M) No. 2801 of 2024
Piyush Tomar …Applicant

Versus

State of Himachal Pradesh …Respondent

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3. CrMP (M) No. 2802 of 2024
Rishabh Sharma …Applicant

Versus

State of Himachal Pradesh …Respondent

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

Whether approved for reporting?[1]

For the applicant(s) : Mr. Ashok Sharma, Senior Advocate, with Mr. Vikas Rathore, Mr. Vinod Chauhan and Ms. Anubhuti Sharma, Advocates.

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

For the respondent(s) : Mr. Mohinder Zharaick, Additional Advocate General, with Ms. Ranjna Patial, Deputy Advocate General, assisted by ASI Jasbeer Singh, I.O., Police Station West, Shimla, H.P.

Virender Singh, Judge. *(Oral)*

The above-titled bail applications are being disposed of by the common order, as, all the three bail applications have been filed, in the same FIR, i.e. FIR No. 204 of 2024, dated 17th November, 2024, registered under Sections 298, 194 (2), 191 (2), 191 (3), 190, 115 (2), 324 (4), 352, 351 (2), 196 (2), 118 (1), 118 (2), 132, 121 (1) and 111 of the Bharatiya Nyaya Sanhita (hereinafter referred to as 'BNS'), with Police Station West, Shimla, District Shimla, H.P.

2. Apprehending their arrest in the above-noted FIR, these bail applications have been filed by the above-named applicants, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS'), for passing a direction, in their favour, directing the Investigating Officer/police of Police Station West,

District Shimla, H.P., to release them on bail, in the event of their arrest, in the above-noted FIR.

3. According to the applicants, they are innocent persons and have falsely been implicated, in this case, by the police. They have termed the case of the police, as false and frivolous.

4. The applicants have also given the history of the litigation, regarding the property in dispute. According to the applicants, their custody is not required for any purpose and no fruitful purpose would be served by keeping them in judicial custody, as the very genesis of the case against the applicants is doubtful and imaginary.

5. As per the applicants, they are ready to abide by any condition(s), to be imposed by this Court, in case, any direction is issued to the police/Investigating Officer, under Section 482 of the BNSS.

6. On the basis of the above facts, the applicants have prayed that the bail applications may kindly be allowed.

7. While issuing notice to the State, interim bail was granted to the applicants, with a direction to the Investigating Officer to release them on bail, in the event of their arrest, subject to furnishing personal bonds, with one surety each in the like amount, to the satisfaction of the Investigating Officer.

8. On notice, the police has filed the status report, disclosing therein, that on 17th November, 2024, Constable Puran Chand, No. 428, 3rd IRBn Pandoh, who has been deputed on Guard duty at Ramkrishan Mission, Komli Bank, Shimla, submitted a complaint, mentioning therein that he, alongwith other police official, was posted on guard duty in Ramkrishan Mission Ashram, Komli Bank, Shimla.

8.1. According to him, on 16th November, 2024, at about 05.40 p.m., there were about 50-60 men and women in the temple premises and *Aarti* was being performed. At that time, Swami Rupanand was giving sermons. Thereafter, Swami Tanmahimanand had also given sermons. When the persons present there did not come out of the temple, after the sermons were over, then,

Swami Rupanand requested the police to request the people present there to go out of the temple premises, but, no heed was paid by the said persons. They put the religious *kalash* there. Their act was opposed by Swami Tanmahimanand, however, no heed was paid to his request by the persons present there. The said persons started establishing the *kalash.* They sat on both the doors and did not permit anyone to come inside. In this regard, the matter was also reported to Police Station West, through telephone, upon which, police and SDM reached at the spot.

8.2. It has been mentioned in the complaint that efforts were made by the SDM and the police authorities to make them understand and to maintain law and order situation, as, the Court had ordered to be maintain status quo there. But, the persons present there had started reciting 'Om', whereas, the followers of Ramkrishan Mission had started raising slogans and warned the authorities to take the persons present there out of the premises, otherwise, they will shunt them out.

8.3. It has been mentioned in the complaint that one woman devotee of Ramkrishan Mission had thrown a chair on the ladies of the other group and both the sides had started pelting stones. Not only this, they have thrown the flower pots on each other. Police had also made efforts to pacify them, but, they could not succeed.

8.4. According to the complainant, the persons belonging to Ramkrishan Mission had beaten the other party with dandas, stones and by throwing flower pots.

8.5. On the basis of the above facts, he has prayed that the action be taken, upon which, the police machinery swung into motion. They reached at the spot, where, the members belonging to *Brahmo Samaj,* on one side and the persons belonging to Ramkrishan Mission, on the other side, were present in large number.

9. It has been mentioned in the status report that the authorities, present there, had made efforts to make them understand, but, despite this fact, the incident had taken place.

10. During the course of investigation, the spot was videographed. The physical evidence was taken into

possession from the spot. The statements of the witnesses were also got recorded. The injured were taken to IGMC for their medico-legal examination, and their MLCs were taken into possession. The persons belonging to Brahmo Samaj were also medico-legally examined at DDU, Zonal Hospital, Shimla, and, the Doctor has declared the injury of one person as grievous in nature. As such, Section 196 (2), 118 (1), 118 (2) and 111 of BNS were added, in the case.

11. It has been mentioned in the status report that in compliance of the directions of this Court, the applicants have joined the investigation and the physical evidence produced by them was taken into possession.

12. On the basis of the investigation, so conducted till date, the police has submitted that the land in dispute is in the name of *Brahmo Samaj* Community. It has also been found in the investigation that on 16th November, 2024, after the conference, the followers of *Brahma Samaj* had performed the *pooja* and for that, they had taken the permission of Swami Tanmahimanand. Consequently, they had performed *pooja* from 05.00 pm to 08.00 pm. Swami Tanmahimanand and Ramrupanand had performed

the *pooja* and also recited *Sunderkand.* When the holy *kalash* was being established, then, Swami Ramrupanand had forcibly removed the *kalash,* due to which, this dispute had arisen. Police was also there as, they were already deployed there with a direction not to obstruct the movement of any follower of *Brahmo Samaj.*

13. According to the police, it is an incident of religious sacrilege, as, the applicants had hatched a conspiracy and instigated the students belonging to ABVP and committed this incident.

14. It is the further case of the police that *prima facie,* it is a case of land grabbing, but, in order to ascertain, who is the mastermind in the alleged crime, the custodial interrogation of the applicants is required.

15. It has also been apprehended that although, the applicants have joined the investigation, but, they are not disclosing about the other persons, who were allegedly with them, at the time of incident.

16. On the basis of the above facts, a prayer has been made to dismiss the bail applications.

17. Heard.

18. First of all, so far as the apprehensions, which have been expressed by the police, in the status report, according to which, in case, the interim orders are made absolute, the applicants may hamper the investigation of the case and may also coerce and allure the witnesses not to depose against them, are concerned, for those apprehensions, reasonable conditions can be imposed on the applicants, in case, the interim orders are made absolute.

19. The role allegedly played by the applicants, in the commission of the alleged crime, will be proved during the course of trial. The applicants are to be presumed innocent, till the conclusion of the trial and the bail applications cannot be rejected as a matter of punishment, as, pre-trial punishment is prohibited under the law.

20. Although, it has been mentioned in the status report that the custodial interrogation of the applicants is required, but, merely mentioning this fact, in the status report, is not sufficient, as, it is for the police to make out a case for custodial interrogation, by submitting as to why

the custodial interrogation of the applicants is required by the police.

21. The applicants are the permanent residents of Shimla, as such, it cannot be apprehended that in case, the interim orders are made absolute, they may not be available for the trial.

22. On the basis of the vague averments in the status report, the prayer, so made, by the learned Additional Advocate General, appearing for the State, is too short to decline relief to the applicants. As such, this Court is of the view that the interim orders, dated 10th December, 2024, passed in all these cases, are liable to be made absolute.

23. Consequently, interim orders, dated 10th December, 2024, passed in all these cases, are made absolute, subject to the following conditions:

> *a) That the applicants will join the investigation of the case, as and when, called for, by the Investigating Officer, in accordance with law;*
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> *b) That the applicants will not leave India, without prior permission of the Court;*
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> *c) That the applicants 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 applicants 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;

24. 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 applications.

25. The applicants are directed to move regular bail applications, when charge sheet will be filed in the Competent Court of Law.

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

(Virender Singh)
Judge

December 23, 2024
(rajni)