

Ismail Mohd Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: Feb. 8, 2022

Acts Referred: Indian Penal Code, 1860 " Section 34, 380, 411, 457
 Evidence Act, 1872 " Section 27

Hon'ble Judges: Jyotsna Rewal Dua, J

Bench: Single Bench

Advocate: N.S. Chandel, Arvind Sharma, Hemant Vaid, Himanshu Mishra, Bharat Bhushan

Final Decision: Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. FIR No. 151 of 2021, dated 13.12.2021 was registered against the petitioner and four other accused persons at Police Station, Barotiwala, District

Solan, under Sections 457, 380, 411 and 34 of Indian Penal Code. The petitioner seeks regular bail in this FIR.

2. As per status report, the FIR was registered on the basis of complaint of one Shri Sunil Gupta. On 13.12.2021, the complainant stated that he was

running a ready made garments shop at Jharmajri. On 12.12.2021 he pulled down the shutter of his shop at 9:00 P.M. and went to his home. He came

for opening his shop at 9:00 A.M. the next day and saw the lock of the shop missing. The complainant also noticed ready made garments and shoes

were stolen from his shop. The value of the stolen articles was around Rs.90,000-95,000/-. On the basis of this complaint, the FIR was registered and

investigation ensued.

The prosecution case against the petitioner is that during the intervening night of 12.12.2021/13.12.2021, the petitioner alongwith two other

accomplices i.e. Shoukat Ali and Zusuf Mohammad broke open the lock of the shop of complainant Sunil Gupta at Jharmajri. The accused persons

including the petitioner stole 50 pairs of shoes and ready made garments, total valuing around Rs.90,000-95,000/- . The stolen articles were transported

by the accused persons in a truck belonging to co-accused Shoukat Ali to Sun City road from where the articles were carried in another truck

belonging to one Nazir Mohammad. The stolen articles were eventually sold by Zusuf Mohammad to one Nazardeen.

As per the status report, petitioner, Zusuf Mohammad and Shoukat Ali were arrested on 26.12.2021. During investigation, on 26.12.2021 co-accused

Zusuf Mohammad got recorded his statement under Section 27 of Indian Evidence Act . Pursuant thereto stolen articles were recovered from

Nazardeen.

3. Learned senior counsel for the petitioner submitted that the petitioner is innocent and has been falsely involved in the case. That there is no direct or

indirect evidence connecting the petitioner with the offence. That the investigation of the case is over and nothing incriminating is required to be

recovered from the petitioner. Learned Senior counsel further submitted that the petitioner will abide by all the terms and conditions, which may be

imposed upon him by this Court in case of grant of bail. There is no apprehension of his fleeing from justice as he is permanent resident of village

Nawangar Jhiran, Tehsil Kalka, District Panchkula, Haryana.

Per contra, learned Additional Advocate General opposed the grant of bail on the ground that there is enough evidence against the petitioner of having

committed the offence in question. That co-accused Nazir Mohammad is also yet to be arrested by the investigating agency.

4. I have heard learned counsel for the parties and gone through the status report. The petitioner is alleged to be involved in commission of offences

under Sections 457, 380 and 411 of Indian Penal Code. The primary allegations against the petitioner are that he alongwith co-accused persons

Shoukat Ali and Zusuf Mohammad had stolen ready made garments and shoes valuing Rs.90,000-95,000/- from the shop of the complainant. The

stolen articles have since been recovered on the basis of statement statedly given by co-accused Zusuf Mohammad under Section 27 of the Indian

Evidence Act. The petitioner was arrested on 26.12.2021. He has been thoroughly interrogated in custody. The status report does not even mention

that any further custodial interrogation of the petitioner is necessary in this case. No recovery remains to be effected from the petitioner. Considering

the facts and circumstances of the case, the nature of allegations levelled against the petitioner, the mode and manner of the commission of the crime,

I am of the considered opinion that further detention of the petitioner will not serve cause of justice. The status report does not indicate any criminal

record of the petitioner. Therefore, the present bail petition is allowed. Petitioner is ordered to be released on bail on his furnishing personal bond of

Rs. 50,000/- with one local surety in the like amount to the satisfaction of learned trial Court having jurisdiction over the concerned Police Station,

subject to the following conditions:

(i) The petitioner shall join the investigation of the case as and when called for by the Investigating Officer in accordance with law and shall cooperate

with the Investigating Agency.

(ii) The petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever:

(iii) The petitioner shall not contact the complainant, threaten or browbeat him or to use any pressure tactics in any manner whatsoever.

(iv) The petitioner shall not leave India without prior permission of the Court.

(v) The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with

the facts of the case to dissuade him from disclosing such facts to the Court or any Police Officer;

(vi) The petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vii) The petitioner shall inform the Station House Officer of the concerned Police Station about his place of residence during bail and trial. Any

change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone

Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of

the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an

opinion on the merits of the matter. Learned trial Court shall decide the matter without being influenced by above observations.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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