

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1413 of 2020

Judgment reserved on: 29th October, 2020.Date of Decision: 18th November, 2020

Ram Kumar Rana @ Raj Kumar

...Petitioner.

Versus

...Respondent.

State of Himachal Pradesh

*Coram:***The Hon'ble Mr. Justice Anoop Chitkara, Judge.***Whether approved for reporting?¹ No.*

For the petitioner:

Mr. Nareshwar Singh Chandel, Senior Advocate with
Mr. Vinod Kumar Gupta, Advocate.

For the respondent:

Mr. Ashok Sharma, Advocate General with Mr. Nand
Lal Thakur, Addl. A.G.**Anoop Chitkara, Judge.**

On the allegations of selling fake Degrees, the petitioner, who is under incarceration on being arraigned as an accused in FIR number 27 of 2020, dated 8.3.2020, registered under Sections 420, 467, 468, and 120-B of Indian Penal Code, 1860, in the Police Station Dharampur, District Solan, HP, disclosing non-bailable offences, has come up before this Court seeking regular bail under Section 439 CrPC.

2. The petitioner was Chancellor of Manav Bharti University, which is a private University constituted under Manav Bharti University (Establishment and Regulation) Act, 2009, passed by H.P. Legislative Assembly, formed by Manav Bharti Charitable Trust, of which the Petitioner is also a Chairman-cum-Trustee.

¹ **Whether reporters of Local Papers may be allowed to see the judgment?**

3. The petitioner was arrested in the aforesaid FIR on 19.6.2020 when his application filed under Section 438 CrPC for anticipatory bail was rejected by this Court in Cr.MP(M) No. 761 of 2020, decided on 19.6.2020. Pursuant thereto, the petitioner moved an application for regular bail under Section 439 CrPC before the concerned Sessions Judge. However, vide order dated 7th August, 2020, the learned Additional Sessions Judge-II, Solan, District Solan, HP, dismissed the petition.

4. I have heard Mr. Nareshwar Singh Chandel, learned Senior Counsel, ably assisted by Mr. Vinod Kumar Gupta, Advocate, for the petitioner and Mr. Ashok Sharma, learned Advocate General, assisted by Mr. Nand Lal Thakur, learned Additional Advocate General for the respondent/State, and seen the status report(s) as well as the police file to the extent it was necessary for deciding the present petition.

5. **FACTS**

(a) The gist of the First Information Report and the investigation is that way back on Aug 16, 2017, the Secretary of Himachal Pradesh Private Education Institutions Regulatory Commission sent a complaint addressed to the Director General of Police, Himachal Pradesh, Shimla-2, which is reproduced as under:

“From

The Chairman
H.P. Private Educational Institutions Regulatory
Commission, Shimla-9.

To

The Director General of Police,
Himachal Pradesh, Shimla-2.

Subject: Issue regarding 103 Degrees/Diplomas issued
by Manav Bharti University, Laddo, Sultanpur,
Distt.Solan (HP) which were found to be fake
on verification.

Sir,

I am directed to submit that this Commission has been formed with an objective providing a regulatory

mechanism in the State and for working as an interface between the State Government and Central Regulatory Bodies for ensuring appropriate standards of admission, teaching examination, research and protection of interest of students in the Private Educational institutions and for matters connected therewith or incidental thereto. This Commission received a request from the Directorate of Higher Education on 06.01.2017 for verification of 103 degrees diplomas issued by the Manav Bharti University in various disciplines (Copy along with the list of candidates and their particulars as Annexure-I is enclosed for kind perusal). The matter for verification of degrees/diplomas was taken up with the Registrar, Manav Bharti University, Solan vide this office letter No. HPPERC 28 MBU-Vol-III/2016-3813 dated 03.03.2017 (copy enclosed). But the University in its response dated 10.03.2017 denied having issued any documents with respect to these 103 degrees/diplomas (copy enclosed as Annexure-II). Your kind attention is drawn to the fact that from the bare perusal of the degrees/diplomas enclosed it is evident that the same have been issued by Manav Bharti University, Solan. However, from the refusal of issuance of these documents by the University it has questioned the sanctity of these degrees/diplomas. Therefore, there is sufficient incriminating material which shows that the degrees/diplomas in question are not genuine. Hence, a high-level investigation is required to be done as it is a serious issue. You are therefore requested to look into the matter and direct a high-ranking officer of your department to investigate the matter in order to reveal the truth behind the issue and thereafter taken action in accordance with law. This Commission will extend all kinds of possible assistance to the investigating officer in the matter.

Thanking you.

Encls: as above.

Yours sincerely

Sd/-,
(Ekta Kapta)
Secretary".

(b) Investigation revealed that petitioner was running two Universities, one Manav Bharti University, at Solan, Himachal Pradesh, and the other Madhav University, at Sirohi, Rajasthan. Both these institutes were created

after forming charitable trust and were indulging in selling fake degrees by various dubious means.

(c) Based on this information, the Police registered the FIR mentioned above, and the Investigating Officer also searched the premises of Manav Bharti University, District Solan.

(d) The case file reveals that one Pramod, who worked for Manav Bharti University, after his arrest made a disclosure statement under Section 27 of Indian Evidence Act, 1872, which led to a discovery of a 1500 fake degrees, stamps and other material of Manav Bharti University, Solan, from another unit of the bail Petitioner, at Sirohi, Rajasthan. Prima facie, Raj Kumar Rana, was the wholly Solly of this Sirohi institute. This recovery, prima facie, pointed towards his involvement and participation in the crime.

(e) Similarly, the petitioner continued to employ one Krishan Kumar, despite acquiring knowing of fake degrees being prepared and sold under the name of the University, of which he was a Chancellor. It puts the petitioner in the scanner.

(f) Investigations were also carried out at Madhav University, Sirohi, Rajasthan, w.e.f. 23.6.2020 to 25.6.2020 by taking the petitioner to the said place.

(g) The investigation is now being conducted by a high-level Special Investigation Team with representatives from ED and IT as co-opted members to investigate the matter thoroughly.

(h) The Investigating Team locked the bank accounts, locker and FDRs of the petitioner, his son and wife.

(i) During investigation statements of witnesses were recorded and incriminating material seized. Allegedly, 28 packets regarding fake degrees which were sent from Manav Bharti University were not recovered.

(j) Ld. Advocate General, on instructions received from the Investigator contends that they are taking steps for the forensic audit of the Manav Bharti University since its inception till now, and it is likely to take some time.

6. The petitioner's criminal history relating to the offences prescribing sentence of greater than seven years of imprisonment or when on conviction, the sentence imposed was more than three years: Ld. Counsel for the petitioner states on instructions that the accused has no criminal history, except the FIRs relating to fake degrees, and the status report does not confront it.

SUBMISSIONS:

7. Mr. Nareshwar Singh Chandel, learned Senior Advocate for the petitioner, submits that Manav Bharti University is a creation of statutes and works as per the Act. He further claims that the petitioner had been just a Chancellor of the University and in fact it is the Vice Chancellor, Registrar, Controller of Examination and other administrative staff of Manav Bharti University, who are responsible for its administrative functioning under the Act.

8. To the contrary, Mr. Ashok Sharma, learned Advocate General, contended that this University was owned by Manav Bharti Trust which had only three members, one of whom, was the petitioner, another his wife and the third being his father-in-law, who has now expired. Mr. Ashok Sharma, learned Advocate General, relied upon the record to show that Mr. Raj Kumar Rana, the petitioner, was the Chairman of the said Trust as well as the Chancellor of the University. Thus, what Mr. Nareshwar Singh Chandel, learned Senior Advocate implies is controverted because of the dual positions of the petitioner. Mr. Ashok Sharma, Ld. Advocate General, further contends that the modus Operandi of the petitioner was to sell counterfeit degrees for cash. He states that the possibility of a large number of persons getting jobs by using these fake degrees as genuine cannot be ruled out. He also contends that the persons, who had issued fake Degrees continued to be associated with the university till date in one capacity or the

other, and despite knowing that many allegations of counterfeit Degrees surfaced, what the petitioner in the position of Head of the University as well as Trust would do was to take out the rotten apple, but to the contrary, he continued to feed the black sheep, which establishes his involvement and his role as the kingpin. Mr. Ashok Sharma, learned Advocate General, also argued that the petitioner is a flight risk because he had already shifted his wife and daughter to Australia. Therefore, there is every possibility of his fleeing away from justice.

9. To counter these arguments, Mr. Nareshwar Singh Chandel, learned Senior Advocate contends that the petitioner has huge property in India and he is ready to surrender his passport and in case of need to travel out of India, he will seek prior approval from the investigator.

10. In **Gurbaksh Singh Sibia and others v. State of Punjab**, 1980 (2) SCC 565, (Para 30), a Constitutional bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons accused of non-bailable offences are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a *prima facie* case against him, or despite the existence of a *prima facie* case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In **State of Rajasthan, Jaipur v. Balchand**, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of

justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In **Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh**, (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours release unless countered by the negative criteria necessitating that course. In **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

11. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State. However, while deciding bail applications, the Courts should discuss evidence relevant only for determining bail. The difference in the order of bail and final judgment is similar to a sketch and a painting. However, some sketches are in detail and paintings with a few strokes.

12. It goes without saying that the petitioner has, *prima facie*, committed an offence, which not only destroyed the faith on the Educational Institutions, but also exposed the administrative lapses while creating private Universities. Be that as it may, based upon the offences referred to in Police report, the offences are triable by a Court of Magistrate. A perusal of the status report dated 11.11.2020, reveals that the police had filed a charge sheet under Section 420, 467, 468 and 120-B IPC. The maximum sentence prescribed under Section 420 IPC is for a term which may extend to seven years; Section 467 IPC provides for life imprisonment; Section 468 IPC provides for seven years; and 471 and 120-B

IPC in relation to the above substantive offences. Although Section 467 IPC provides for life imprisonment, yet it is apparently for forging a valuing security, Will etc. Thus, the fact remains that the matter is triable by a Chief Judicial Magistrate and the petitioner is under incarceration since 19th June, 2020 i.e. for about 5 months. Although the investigation would take sufficient time to complete, yet the fact that an incomplete charge-sheet was filed and the investigation may continue for months together as such the petitioner's liberty cannot be curtailed any further. These factors, without extending them further, make out a case for bail.

13. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. Without commenting on the merits of the case, the stage of the investigation and the period of incarceration already undergone would make out a case for bail.

14. Regarding the perception of flight risk as contended by learned Advocate General, before the petitioner is released from prison, he shall surrender his passport with the Investigating Officer, if not already done.

15. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate conditions and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

16. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

17. Following the decision of this Court in **Abhishek Kumar Singh v. State of HP**, Cr.MP(M) No. 1017 of 2020, the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rupees ten

Lacs only (INR 10,00,000/-), and shall either furnish two local sureties of a similar amount to the satisfaction of the Chief Judicial Magistrate/Ilaqua Magistrate/Duty Magistrate/the Court exercising jurisdiction over the concerned Police Station where FIR is registered, or the aforesaid personal bond and fixed deposit(s) for Rs. Ten Lacs only (INR 10,00,000/-), made in favour of Additional Chief Judicial Magistrate/Judicial Magistrate, Solan, Distt. Solan, H.P., from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account. Such a fixed deposit need not necessarily be made from the account of the petitioner. If such a fixed deposit is made manually, then the original receipt has to be deposited. If made online, then the copy attested by any Advocate has to be filed, and the depositor shall get the online liquidation disabled. It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. During the trial's pendency, it shall be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa. Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). The Court shall have a lien over the deposits until discharged by substitution, and otherwise up to the expiry of the period mentioned under S. 437-A CrPC, 1973. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

- (a) The petitioner to give security to the concerned Court(s)/Investigating Officer, for attendance on every date, unless exempted, and in case of Appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.
- (b) The Attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioner along with the phone

number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

(c) The petitioner shall inform the Investigator when he leave Himachal Pradesh and disclose the address and if the Investigator needs to interrogate him, then he shall prefer joining investigating over the proposed travel. Thus, he shall join investigation as and when called by the Investigating officer or any superior officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5 PM. The petitioner shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.

(d) The petitioner shall cooperate with the investigation at all further stages as may be required, and, in the event, there is any failure on his part to do so, it will be open for the prosecution to seek cancellation of the bail granted by the present order.

(e) The petitioner shall not influence, threaten, browbeat, or pressurize the witnesses and the Police officials.

(f) The petitioner shall not make any inducement, threat, or promise, directly or indirectly, to the Investigating officer, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

(g) Once the trial begins, the petitioner shall not, in any manner, try to delay the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted, and in case of Appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.

(h) There shall be a presumption of proper service to the petitioner about the date of hearing in the concerned Court, even if it takes place through SMS/WhatsApp message/ E-Mail/ or any other similar medium, by the Court.

(i) In the first instance, the Court shall issue summons and may send such summons through SMS/ WhatsApp message/ E-Mail.

(j) In case the petitioner fails to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioner about such Bailable warrants through SMS/ WhatsApp message/ E-Mail.

(k) Finally, if the petitioner still fails to put in an appearance, then the concerned Court may issue Non-Bailable warrants to procure the petitioner's presence and send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper.

(l) In case of Non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

(m) The petitioner shall intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, within 10 days from such modification, to the police station of this FIR, and also to the concerned Court.

(n) The petitioner shall abstain from all criminal activities. If done, then while considering bail in the fresh FIR, the Court shall take into account that even earlier, the Court had cautioned the accused not to do so.

(o) During the trial's pendency, if the petitioner commits any offence where the sentence prescribed is seven years or more, then the State may move an appropriate application for cancellation of this bail.

(p) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioner. Otherwise, the bail bonds shall continue to remain in force throughout the trial and also after that in terms of Section 437-A of the CrPC.

(q) The petitioner shall not leave the country without the permission of this Court and once the Trial Court takes the cognizance, then from the Trial Court.

18. The learned Counsel representing the accused and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order to the petitioner.

19. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even before the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

20. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation, in accordance with law.

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

22. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

The petition stands allowed in the terms mentioned above.

Copy *Dasti*.

**(Anoop Chitkara),
Judge.**

November 18, 2020 (ps)

High Court