Hem Raj vs State Of Himachal Pradesh on 4 March, 2025

Neutral Citation No. (2025:HHC:4385) IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA Cr. MP(M) No. 226 of 2025 Reserved on: 27.02.2025 Date of Decision: 04.03.2025.

Hem Raj ...Peti

Versus

State of Himachal Pradesh ...Resp

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge. Whether approved for reporting?1 No For the Petitioner : Mr. Prashant Chauhan, Advocate. For the Respondent : Mr Gautam Sood, Deputy Advocate General with HC Vikram No. 116, IO Police Station Theog, H.P. Rakesh Kainthla, Judge The petitioner has filed the present petition for seeking pre-arrest bail. It has been asserted that the petitioner was falsely implicated in FIR no. 14/2025 dated 07.02.2025, registered at Police Station Theog, District Shimla H.P. for the commission of offences punishable under Sections 115(2), 118(1), 126(2) and 351 (2) of the Bhartiya Nyaya Sanhita, 2023 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

Neutral Citation No. (2025:HHC:4385) (BNS). The petitioner is innocent and no case is made out against him. The complaint was filed to harass the petitioner. The petitioner is a respectable member of the society. He would abide by all the terms and conditions, which the Court may impose. Hence, the petition.

2. The petition is opposed by filing a status report asserting that the informant came to the police post in an injured condition with his employer-Prem Verma. Prem Verma filed an application asserting that the petitioner came to the room of the victim on 05.02.2025 and demanded charas and liquor. Subsequently, he (the petitioner) attacked the victim with Darat on the head. The victim made a statement that the petitioner had visited his room and asked for food. The victim served the food, and the petitioner asked the victim to show the road to Tikkar. The victim accompanied the accused. The accused/petitioner picked up a quarrel with the victim on the way and inflicted a blow on the head of the victim with a Darat. The police conducted the investigation. The Medical Officer found a grievous injury on the head. The petitioner got recovered a Darat, the weapon of offence. An FIR No. 9/2022 Neutral Citation No. (2025:HHC:4385) dated 02.02.2022 was earlier registered against the petitioner for the commission of offences punishable under Sections 452, 354(A), 323, 325, 376, 511 of IPC. The petitioner was also convicted in FIR No. 46/2009, dated 29.03.2009, for the commission of offences punishable under Sections 376 and 506 of IPC; hence, the status report.

3. I have heard Mr. Prashant Chauhan, learned counsel for the petitioner and Mr. Gautam Sood, learned Deputy Advocate General, for the respondent-State.

4. Mr. Prashant Chauhan, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The petitioner is not required for custodial interrogation; therefore, he prayed that the present petition be allowed and the petitioner be released on pre-arrest bail.

5. Mr Gautam Sood, learned Deputy Advocate General for the respondent-State, submitted that the petitioner had inflicted an injury on the victim's head with a Darat, a sharp- edged weapon. The petitioner was involved in the commission of the offences earlier, and he has been convicted in one of the cases. There is a likelihood of the petitioner committing an Neutral Citation No. (2025:HHC:4385) offence in case of his release on bail, therefore, it was prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

7. It was laid down by the Hon'ble Supreme Court in P. Chidambaram vs. Directorate of Enforcement 2019 (9) SCC 24 that the power of pre-arrest is extraordinary and should be exercised sparingly. It was observed:

> "67. Ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy."

Neutral Citation No. (2025:HHC:4385)

8. This position was reiterated in Srikant Upadhyay v. State of Bihar, 2024 SCC OnLine SC 282, wherein it was held:

> "25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule and the question of its grant should be left to the cautious and judicious discretion of the Court depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious as the grant of interim protection or protection to the accused in serious cases may lead

> to a miscarriage of justice and may hamper the investigation to a great extent as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest and we say that such orders shall be passed in eminently fit cases."

9. It was held in Pratibha Manchanda v. State of Haryana, (2023) 8 SCC 181: 2023 SCC OnLine SC 785 that the Courts should balance individual rights, public interest and fair investigation while considering an application for pre-arrest bail. It was observed:

> "21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance Neutral Citation No. (2025:HHC:4385) between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each case becomes crucial to ensure a just outcome."

10. The present application has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

11. Section 109(2) of Bhartiya Nayaya Sanhita reads that, if any, act is done with such intention or knowledge and in such circumstance that if by that act death is caused and the person is guilty of murder, he is liable to be imprisoned. In the present case, the petitioner had inflicted a blow on the head, a vital part of the body with a sharp-edged weapon, namely, a Darat and had the death been caused, the petitioner would be, prima facie, guilty of the commission of the murder. The status report does not show that the incident had taken place all of a sudden. The fact that the petitioner was carrying the weapon shows the pre- meditation; hence, prima facie, the offence punishable under Section 109(2) of BNS is made out against the petitioner.

Neutral Citation No. (2025:HHC:4385)

12. It was submitted that no serious injury was caused to the person of the victim and the offence punishable under Section 109 of BNS is not attracted. This submission is only stated to be rejected. It was laid down by the Hon'ble Supreme Court in Shoyeb Raja v. State of M.P., 2024 SCC OnLine SC 2624 that infliction of bodily injury is not necessary to constitute an offence punishable under Section 307 of IPC (corresponding to Section 109 (2) of BNS). It was observed:

> 11.1 In State of Maharashtra v. Kashirao (2003) 10 SCC 434, the Court identified the essential ingredients for the applicability of the section. The relevant extract is as

below:

"The essential ingredients required to be proved in the case of an offence under Section 307 are:

(i) that the death of a human being was attempted;

(ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and

(iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily injury as : (a) the accused knew to be likely to cause death; or

(b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the Neutral Citation No. (2025:HHC:4385) accused having no excuse for incurring the risk of causing such death or injury."

11.2 This Court in Om Prakash v. State of Punjab 1961 SCC OnLine SC 72, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

"a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do a certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence"

in Section 511, can only mean "whoever: intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time." (Emphasis supplied) 11.3 Hari Mohan Mandal v. State of Jharkhand (2004) 12 SCC 220 holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this Neutral Citation No. (2025:HHC:4385) section, so long as the injury is inflicted with animus. It has been held:

"10. ...To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. ...What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law if there is present an intent coupled with some overt act in execution thereof.

11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in the execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under the circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt." (Emphasis supplied) Neutral Citation No. (2025:HHC:4385)

13. Therefore, the infliction of the serious injury is not sufficient to attract the provisions of Section 109 of BNS. The only requirement is that the circumstances should have been such that if the death were caused, the person would have been guilty of the commission of murder. In the present case, it has already been found out above that prima facie, had the death been caused, the petitioner would have been guilty of the murder; hence, the offence punishable under Section 109(2) of the BNS Act would be prima facie, made out even if no serious injury was caused to the victim.

14. The petitioner has criminal antecedents. One FIR is pending investigation against the petitioner and the petitioner has been convicted in another FIR. This Court exhaustively dealt with the relevance of criminal antecedents in Aminodin vs State of H.P. 2024:HHC: 6091 and held after referring to various judgments that a Judge must consider the criminal antecedents of the accused, the nature of such offences and his general conduct while considering the bail petition. The bail should not be generally granted to an accused having criminal antecedents when there is a likelihood of the commission of the crime. In the Neutral Citation No. (2025:HHC:4385) present case, the registration of the FIRs against the petitioner shows that he is likely to commit a crime in case of his release on bail, and the petitioner cannot be released on bail on this consideration as well.

15. In view of the above, the petitioner cannot be held entitled to pre-arrest bail at this stage, hence, the present petition fails and the same is dismissed.

16. The observation made herein before shall remain confined to the disposal of the instant petition and will have no bearing, whatsoever, on the merits of the case.

17. The present petition stands disposed of, and so are the pending miscellaneous applications, if any.

(Rakesh Kainthla) Judge 4th March, 2025 (saurav pathania)