
(2010) 04 SHI CK 0141
In the High Court Of Himachal Pradesh

Ajam and Shamshu Deen

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 29-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 202, 395, 412

Citation : (2010) 04 SHI CK 0141

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—Both the petitions are arising from the same FIR hence taken up together for its decision.

Heard.

Petitioners are accused in FIR No. 251/2009 in a dacoity case registered under Sections 395, 412 and 202 Indian Penal Code in Police Station Sunder Nagar District Mandi, H.P.

They failed to get bail from the Court of Sessions as such, the instant application u/s 439 of the Code of Criminal Procedure has been moved for their enlargement on bail.

2. The challan has been presented in the Court now pending trial.

3. In short, prosecution case can be stated thus. Shamshu Deen petitioner was employed driver by Shri Ashwani Kumar resident of Delhi in his Scorpio vehicle bearing Registration No. DL-3CY-8786. On 8th September, 2009, this vehicle entered the boundaries of Himachal Pradesh through the Toll-tax barrier ? Gadamoura? at Swarghat District Bilaspur (H.P.). As per procedure toll-tax entry fee was charged and receipt was issued. The carbon copy thereof was retained in the check-post.

4. Shyam Lal Jeweller was residing in village Kangu on the National Highway

where he was having his shop at Sunder Nagar. During the intervening night of 8th/9th September, 2009, except the driver of the said vehicle, five persons entered into the house of the complainant. Three of them were having pistols and one was armed with *darat* (an instrument of cutting) and one of them, who was later identified as Ajam, captured the minor child of the complainant. Accused persons started demanding the bag of jewellery, lest the child would be killed. In the meantime, other accused persons searched the room of the complainant and belongings of his wife. From the Almirah, they picked-up the jewellery bag and cash amounting to Rs. 70,000/- along with two mobile sets, one pertaining to complainant Shyam Lal and other his wife Sushma, and decamped with the loot. 5. Matter was reported to the Police. The mobile phones of the complainant and his wife were kept on surveillance/observation through their IMEI numbers. It was detected later that IMEI number of the mobile phone belonging to Smt. Sushma was used at Gaziabad by changing the SIM of ?Idea? service provider. The Police nabbed one Mansukh. He was arrested. On his interrogation, he disclosed that the mobile set was handed over to him by co-accused Kasim. On his information Kasim was arrested u/s 412 Indian Penal Code. He was also interrogated. Kasim is alleged to have disclosed that Sheru Deen accused had handed over this mobile set to him. On this information Sheru Deen was arrested on 15.11.2009. On his interrogation by the Police, he broke-down and disclosed that accused persons Islam, Ajam (petitioner in Cr.M.P. (M) No. 223/2010) Sheru Deen along with Shamshu Deen driver (petitioner in Cr.M.P. (M) NO. 224/2010) had come from Delhi and entered in the boundary of Himachal Pradesh on 8th September, 2009 and committed the alleged offence.

6. The test identification parade of the accused persons were got done before the Judicial Magistrate Ist Class Court No. (III), Mandi. Ajam petitioner and accused Islam were identified by the complainant. He had made the statement that the ornaments regarding which the dacoity was committed, were sold at Shamli U.P.. Pursuant to his statement, recovery of 200 grams of gold converted from the stolen ornaments was recovered.

7. In so far as petitioner Shamshu Deen is concerned, he is alleged to have got effected the recovery of 20 grams gold (having 203 gold nose pins) from his residence Munganagar- Delhi. Further, the Police also recorded the statement of Ashwani Kumar owner of the said vehicle and according to him, at the relevant time, Shamshu Deen was employed as driver in his private vehicle Scorpio No. DL-3CY-8786. Police also took carbon copy of the toll-tax barrier against which the said vehicle had entered in the boundaries of Himachal Pradesh.

8. Police also took into possession the vehicle in question from it a visiting card of the petitioner Shamshu Deen was recovered.

9. In addition to it, police had taken into possession and sealed a piece of mat from the house of the complainant over which there were stains of spitting on account of consumption of gutkha (a sort of tobacco). After the arrest of the accused persons, blood sample and saliva of all the accused persons were sent to

Forensic Science Laboratory Junga for its comparison with the stains of spit of Gutkha found on the spot. As per DNA report it matched with the spitting of co-accused Islam.

10. In the totality of the circumstances, petitioners, prima facie stand connected with the alleged offences of serious nature. Their release on bail is against the interest of society. Therefore, no bail is available to them. Accordingly both the bail applications are rejected.

11. Any observations made hereinabove shall have no bearing on the merits of the case in any manner as these are only made for the disposal of the present applications.

12. If the urgent copy of this order is applied by any of the parties, it be supplied to them, as per rules.

The applications stand disposed of.