

(2021) 04 SHI CK 0196

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.695 Of 2021

Arun Kaushal And Another

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 23-04-2021

Acts Referred:

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(1)

Code Of Criminal Procedure, 1973 — Section 437A, 438, 439, 482

Citation : (2021) 04 SHI CK 0196

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : R.K. Gautam, Gaurav Gautam, Nand Lal Thakur

Final Decision : Allowed

Judgement

Anoop Chitkara, J

1. The petitioners, on being arraigned as accused of commission of offences punishable under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3(1) of the said Act, being cognizable and non-bailable offences, have come up under section 439 of the Code of Criminal Procedure, 1973, seeking permission to surrender before this Court, and simultaneously seeking release on ad-interim bail.

2. A perusal of the petition reveals that the petitioners straightaway filed the bail petition before High Court, which is permissible given the decision of a three Judges Bench of HP High Court, in Mohan Lal v Prem Chand, AIR 1980 HP 36, (Para 9 & 15), wherein the Full bench holds that a person can directly apply for an anticipatory bail or regular bail to the High Court without first invoking the jurisdiction of the Sessions Judge.

3. The bail petition is silent about criminal history, however, learned counsel for the bail petitioners, states on instructions that the petitioners have no criminal

past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. Status report stands filed and taken on record and the same also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioners are that on 24.11.2020, the complainant Harvinder Singh, informed the Police Station about the illicit felling of trees on the government land near his private land. In the said connection, the Forest and Revenue Officials were present, but at that time, the accused kept him hostage and did not let him go. Subsequently, he informed his wife about the same and then on her arrival they also attacked his wife and when she was making video of the incident, they also took her mobile and used derogatory words prohibited under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Further allegations are that they also snatched her Mangalsutra. Subsequently, present case FIR stands registered against the accused persons.

5. The contents of FIR/status report reveal that the petitioners stand arraigned as accused for the commission of Non-bailable offences.

6. In *Ami Chand v. State of H.P.*, CrMPM 1116 of 2020, Para 65, this Court held that in the absence of any riders or restrictions under S. 439 CrPC, any person accused of a non-bailable offence, under any penal law, including the violations under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, can apply under section 439 CrPC, offering to surrender and simultaneously seeking interim bail. On receipt of such application, the Court is to satisfy that the applicant stands arraigned as an accused in a FIR disclosing Non-Bailable offences. If all these parameters are complete, then the Courts are under an obligation to accept surrender. Since custody is a sine qua non for considering a bail application, the Court is under an obligation to consider the prayer for interim bail after this deemed custody. All such pleas fall under the scope of S. 439 CrPC itself, and there is no need to invoke S. 482 CrPC. After that, granting or refusing interim bail is a Judicial function.

7. The accused/petitioner are present in Court and have offered to surrender, which is accepted, and thus, are in deemed custody of the Court.

8. Mr. R.K. Gautam, learned Senior Advocate, argues that the allegations are false, concocted and absolutely baseless. The Senior counsel further contends that the complainant made false and exaggerated allegations invoking SCSTPOA, with a view to deprive the opportunity of S. 438 CrPC.

9. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

10. Reasoning: Keeping in view the nature of allegations and the sentence prescribed therein, the petitioners have made out a case for bail.

11. In the present case, the maximum sentence imposable for the offences mentioned in FIR attracts the application of the directions passed in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, (Para 13), wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

12. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative 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.

13. Given the above reasoning, coupled with the peculiar facts and circumstances of the case, the Court is granting bail to the petitioners, 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.

14. The petitioners shall be released on bail in the FIR mentioned above, subject to their furnishing personal bonds of Rs. Twenty-five thousand (INR 25,000/-) each, to the satisfaction of the Registrar (Judicial)/ Additional Registrar (Judicial) of this Court, or any such Officer as may be authorised in this behalf by any of the Registrars of this Court. Given the conduct of the petitioners to offer surrender before this Court, shows that such accused did not try to abscond, hence there is no need for surety bonds.

15. 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) Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioners along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioners shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioners shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, 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.

d) The petitioners shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioners shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020]:

i. At the first instance, the Court shall issue the summons.

ii. In case the petitioners fail to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.

iii. Finally, if the petitioners still fail to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the petitioners' presence and may send the petitioners to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

16. During the trial's pendency, if the petitioners repeat or commit any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

17. Any Advocate for the petitioners and the Officer in whose presence the petitioners put signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

18. In case the petitioners find 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 petitioners may file a reasoned application before this Court, and after taking cognizance, even to 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.

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

20. 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.

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

22. There would be no need for a certified copy of this order, and any Advocate for the Petitioners can download this order from the official web page of this Court and attest it to be a true copy.

The petition stands allowed in the terms mentioned above.