

(2019) 09 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1716, 1717, 1718 Of 2019

Ashish Gupta And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 439

Indian Penal Code, 1860 — Section 147, 148, 149, 308, 323, 325, 341, 504, 506

Citation : (2019) 09 SHI CK 0029

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : K.D. Sood, Mukul Sood, Sukrit Sood, Shiv Pal Manhans, Raju Ram Rahi, Gaurav Sharma

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in case FIR No. 146 of 2019, dated 23.08.2019, under Sections 147, 148, 149, 308, 325, 341, 323, 504 and 506 IPC, registered in Police Station Kala Amb, District Sirmaur, H.P.

2. As per the averments made in the petition, the petitioners are innocent and have been falsely implicated in the present case. They are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 23.08.2019 police recorded the statement of Shri Dinesh Kumar (complainant), wherein he stated that he has a Prasad shop near Trilokpur temple. On 22.08.2019, at about 07:00 p.m., some boys from the family of Baikunth Nath came and started breaking the

goods kept inside the shop and they threw the goods outside the shop. These boys also picked up a quarrel with Arun Kumar, so Arun Kumar got lodged an FIR in the police station. After lodging of the FIR, when he alongwith his father, Shri Jagpal, Smt. Tara Gupta, Smt. Lata Gupta and Smt. Raksha Devi, was going in his vehicle, having registration No. HP-71-8208, to their house at Trilokpur, Bittu Lal, rammed his vehicle, having registration No. HP71-9053, with his vehicle to stop the same. Thereafter, one creta car stopped and boys from the family of Baikunth Nath accompanied by the boys of Naraiangarh alighted and they were armed with sticks and hockey. These boys, with the help of sticks and hockey, broke the glasses of their vehicle. In the interregnum, Smt. Tara Gupta made a telephonic call to Shri Amar Nath, so Shri Amar Nath and Shri Sant Ram (family members of the complainant) came on the spot, but they were also thrashed by the boys. As per the complainant, some villagers also intervened, but the above boys gave ruthless beatings to the complainant party and also tried to kill them. Somehow they were rescued by the villagers, Smt. Raksha Devi and Shri Pawan Kumar. The above boys, while leaving the spot, also threatened them to eliminate them. On the basis of the statement, so made by the complainant under Section 154 Cr.P.C., police registered a case and the investigation ensued. The injured persons were got medically examined. Police prepared the spot map and also recorded the statements of the witnesses. Both the vehicles, which were involved in the accident, were taken into possession. On 23.08.2019 the petitioners were arrested and during the course of interrogation and investigation they got recovered the sticks and hockey used in the commission of the offence. During the course of investigation it was unearthed that on 22.08.2019 a quarrel took place between both the parties and cross FIRs were registered. It has also come in the investigation that Ali Nawaz, Sahil @ Jaat, Ramu Bhagat @ Ramesh Gupta were with the petitioner and after commission of the offence these persons absconded. Despite best efforts, these persons could not be traced. As per the police, after the occurrence, the situation in the area is tense and the absconded co-accused are yet to be traced and arrested. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were involved in a serious crime. There is possibility that in case at this stage the petitioners are enlarged on bail, they may flee from justice. The petitioners can also tamper with the prosecution evidence, so their applications be dismissed.

4. I have heard the learned Counsel for the petitioners, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case. He has further argued that the petitioners are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has further argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, so the bail applications be allowed. Conversely, the learned Additional Advocate General has argued that the

petitioners were the aggressors and they attacked the complainant party and were found involved in a serious offence, so at this stage, in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice. He has prayed that the bail applications of the petitioners be dismissed.

6. In rebuttal the learned Counsel for the petitioners has argued that the petitioners cannot be kept behind the bars for an unlimited period, especially when the investigation is complete, so the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the maximum punishment in such cases, the manner in which the offence is alleged to have occurred, the fact the petitioners are in judicial lockup, the petitioners are the residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the petitioners are ready and willing to abide by the terms and conditions of bail, if so granted, considering the overall facts, which have come on record, and without discussing the same at this stage and also the fact that the petitioners cannot be kept behind the bars for an unlimited period, so this Court finds that the present is a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, the petitions are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 146 of 2019, dated 23.08.2019, under Sections 147, 148, 149, 308, 325, 341, 323, 504 and 506 IPC, registered in Police Station Kala Amb, District Sirmaur, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bond in the sum of Rs. 20,000/- (rupees twenty thousand) each with one surety each in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

(i) That the petitioners will appear before the learned Trial Court/Police/authorities as and when required.

(ii) That the petitioners will not leave India without prior permission of the Court.

(iii) That the petitioners will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Investigating Officer or Court.

8. In view of the above, the petitions are disposed of.