

(2003) 04 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 338 of 2003

Baldev Singh Bhardwaj

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 22-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(10)

Citation : (2003) 2 ShimLC 55

Hon'ble Judges : Kuldip Chand Sood, J

Bench : Single Bench

Advocate : Sandeep Kaushik, for the Appellant; Ashok Chaudhary, A.A.G., for the Respondent

Judgement

Kuldip Chand Sood, J.—The order will dispose of this petition u/s 439 of the Code of Criminal Procedure for the grant of bail.

2. It appears, a case for an offence punishable u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was registered against the Petitioner with Police Station, Pachhad, in terms of FIR No. 11/2003, dated 20th March, 2003 on a complaint lodged by complainant Ram Nath through the Deputy Commissioner's Office, Sirmaur at Nahan.

3. According to the Petitioner, he is BJP President of Sarahan Block in the District Sirmaur. He is also Pradhan of Gram Panchayat Rajon of Tehsil Pachhad and is active in social life. He also holds various other political offices.

4. On 10th February, 2003, Petitioner alongwith several persons were campaigning for his party candidate. He discovered the road to his home was blocked with big boulders. The Petitioner and other person tried to clear the road. The house of the complainant was in vicinity where the road was blocked. The persons accompanying the Petitioner asked the complainant that who has blocked the road.

5. In third week of March, 2003 the FIR was registered with the allegations that the Petitioner called complainant "Chamarta". The complainant happens to belong to Scheduled Castes.

6. Petitioner surrendered before this Court on 7th April, 2003 and was admitted to interim bail. It is stated that the Petitioner has joined investigation. Learned Additional Advocate General submits that the Petitioner is no longer required by the police nor any recovery is to be made from him.

7. The first question which arises for consideration is whether accused who is not in custody of the Police can be admitted to bail u/s 439 of the Code?

8. No person it is settled, accused of an offence has a right to move the Court for the grant of bail u/s 439 of the Code unless he is in custody. Whether an accused who surrenders before the Court can be said to be in custody for the purpose of Section 439 of the Criminal Procedure Code is question raised by the learned Additional Advocate General. This question is no longer reintegrate.

9. In *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others*, Interpreting the provision of Section 439 of the Code. Their Lordships took a view that when an accused is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence would be deemed to be "in custody" for the purpose of Section 439. In para-8 of the judgment it was observed:

Custody, in the context of Section 439 (we are not, be it noted, dealing with anticipatory bail u/s 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

It was further observed:

He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the Court and submits to its direction.

10. In the present case the accused surrendered in the Court on 7th April, 2003 and is present in the Court even today submitting himself to the jurisdiction of the Court, therefore, he Would be deemed to be in custody for the purpose of Section 439 of the Code.

11. As the accused is no longer required "by the police and nothing is to be recovered from him, the fact that the offence allegedly took place on 10th February, 2003, but the First Information Report was lodged in March, 2003 and the further fact that there is no likelihood of the Petitioner fleeing away from the justice, I allow the application.

12. The Petitioner is admitted to bail in case FIR No. 11/2003, dated 20th March, 2003, registered with Police Station, Pachhad, District Sirmaur, subject to furnishing bonds in the amount of Rs. 5,000 with one surety of the like amount to the satisfaction of the learned Sessions Judge, Sirmaur at Nahan within one week from today.

13. The bail will be subject to the condition that the applicant shall join investigation if and when required to do so by the investigating agency.

The application is disposed of.

Dasti on usual terms.