

(2021) 09 SHI CK 0110

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1897 Of 2021

Captain Kuldeep Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 29-09-2021

Acts Referred:

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

Citation : (2021) 09 SHI CK 0110

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anoop Chitkara, J

This petition coming on for orders this day, the Court passed the following:

FIR No.

Dated

Police Station

Sections

141/2021

27.9.2021

Gagret, District Una, H.P.

3(1) (r&s) of the SC&ST (POA) Act The

1. The petitioners, on being arraigned as accused for commission of cognizable and non-bailable offences punishable under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, have come up before this Court 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. In para 14 of the petition, the petitioners declare having no criminal history.

3. Briefly, the allegations against the petitioners are that complainant Rajesh Kumar gave a written complaint on 27.9.2021 to Deputy Superintendent of Police, Amb. The complainant alleged that Shri Dharamvir Singh, Kuldeep Singh and Anjana Kumari have harassed him on the reasons that he belongs to Scheduled Caste community. The complainant has mentioned the details of the incident and it is irrelevant to mention the same at this stage. Based on such complaint, the Police registered FIR mentioned above.

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

5. 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.

6. The accused/petitioners are present in the Court and had offered to surrender, which request is accepted, and the accused are in deemed custody of this Court.

7. Mr. Y.P.S. Dhaulta, Advocate learned Counsel for the petitioners contends that the complainant had indulged in misuse of provisions of Atrocities Act, which in fact has been enacted with a view to safeguard the interests, but not to spread ill-will in the society. He further submits that the petitioners are respectable persons of their area and do not believe in casteism.

8. While opposing the bail, learned Additional Advocate General submits that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

REASONING:

9. The nature of the allegations are not that serious so as to insist upon the pre-trial incarceration. A perusal of the complaint also points out towards some sort of conflict of interest between the accused and the petitioners.

10. 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 where 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.

11. Without commenting on the case's merits and the circumstances peculiar to this case, the petitioners make a case for bail.

12. The petitioners shall be released on bail in the FIR mentioned above, subject to their furnishing personal bonds of Rs. Ten thousand (INR 10,000/-), to the satisfaction of the Registrar (Judicial)/ Additional Registrar (Judicial), 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 an accused did not try to abscond, hence there is no need for surety bonds.

13. 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) The attesting officer shall, on the reverse page of personal bonds, mention the permanent addresses of the petitioners along with the phone number(s) linked with Aadhar card, 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 addresses and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

b) 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.

c) 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.

d) Once the trial begins, the petitioners 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 petitioners also promises to appear before the higher Court in terms of

Section 437-A CrPC.

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

15. 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.

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

17. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the complainant and the victim, at the earliest, and not later than two days. In case the victim notices stalking or any violation of this order, she may either inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

18. 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.

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

20. In the facts and circumstances peculiar to this case, the petition is allowed in the terms mentioned above.

21. There would be no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioners can download this order along with case status from the official web page of this Court and attest it to be a true copy. In case the Investigators want to verify the authenticity, they can also verify its authenticity and may download and use the downloaded copy.