

(2019) 09 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1701, 1702, 1703, 1704 Of 2019

Firoz Khan And Ors

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 18-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 438
Indian Penal Code, 1860 — Section 34, 323, 325, 342, 382

Citation : (2019) 09 SHI CK 0067

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Karan Singh Kanwar, Neelam Sharma, P.K. Bhatti, Raju Ram Rahi, Prakash Chand

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been moved by the petitioners under Section 438 of the Code of Criminal Procedure for releasing them on bail, in the event of their arrest, in case FIR No. 243 of 2019, dated 06.08.2019, under Sections 342, 382, 325, 323 IPC read with Section 34 IPC, registered in Police Station Paonta Sahib District Sirmour, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, so they may be released on bail.

3. Police report stands filed. As per the prosecution story, on 06.08.2019, at about 06:50 a.m. Shri Manoj Kumar (complainant) got his statement recorded with the police under Section 154 Cr.P.C. The complainant contended that on 05.08.2019, at about 04:00 p.m., he alongwith Shri Vipin Tandon and Shri Vicky

Sharma was going for some work towards Barhal in vehicle, having registration No. HP17C-1729. En route they stopped at a dhabha for tea, but as Shri Vicky Sharma received a telephonic call, so they, without taking tea, came back hurriedly. The complainant has further contended that Shri Vipin Tandon and Shri Vicky Sharma alighted from the vehicle mid way. Thereafter, at about 6-6:30 p.m., the complainant received a telephonic call from the dhaba owner, where they went to take tea, and he asked to meet him. Subsequently, a boy, whom he recognized by face, alongwith one Bittu Sandhu came at his residence and took him in a car. As per the complainant, Bittu Sandhu alongwith others thrashed him and also snatched his mobile, key of car and also took his money. Bittu Sandhu alongwith others continuously gave beatings to him with sticks and also uprooted his hair. Thereafter, they took him a kilometer away from Barhal barrier and threw him, where his vehicle was parked and its dickey was kept open. The dickey had two white bags, so he suspected that for falsely implicating him these two bags have been kept. On hearing this, Bittu Sandhu and others again started beating him, but he managed to run towards the barrier and shouted for help. Thereafter, he fell down and the police personnel rescued him and he divulged the incident to the police personnel. On the basis of the statement of the complainant recorded under Section 154 Cr.P.C., a case was registered and the investigation ensued. The complainant was medically examined and a police team went to the Barhal barrier. Police formed a raiding party and found vehicle, having registration No. HP 17C-1729 (vehicle of the complainant), parked approximately a kilometer away from Barhal barrier and its front side was towards Barhal. Key of the vehicle was found inserted in the key hole of the vehicle and the vehicle's dickey had two plastic bags. The bags were checked and found containing poppy husk (bhukki). On weighment, the contraband was found to be 53.720 kilo grams. Police prepared a rukka and sent the same to police station, whereupon a case was registered. The Medical Officer opined the injured sustained by the complainant to be grievous in nature. Police, on the identification of the complainant, prepared a site plan and also recorded the statements of the witnesses. During the course of investigation, police found that the narrative given by the complainant was true. The complainant was severely thrashed by Bittu Sandhu and other co-accused and they also tried to falsely implicate him in a case of narcotic. In order to evade their arrest, the petitioners absconded and only on 10.09.2019 they joined the investigation. The petitioners are not giving true portrayal of the incidence, recovery of Rs.1500/- is yet to be effected and vehicles used in commission of the crime are also yet to be recovered. As per the police 2/3 more persons were involved in the incidence and the petitioners are not disclosing about them. Lastly, it is prayed that the bail applications of the petitioners may be dismissed, as they are not co-operating in the investigation, recoveries are yet to be effected from them and rest of the accused persons are also yet to be interrogation. The petitioners are turning topsy-turvy and not disclosing the true facts. In case the petitioners, at this stage, enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the respondent/State and gone through the record, including the status report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioners are innocent and they are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are residents of the place. He has further argued that petitioners are ready and willing to abide by the terms and conditions of bail, if in the event of their arrest, they are enlarged on bail. So, the bail applications be allowed and the petitioners be enlarged on bail. Conversely, learned Additional Advocate General, has argued that the petitioners were found involved in serious crime. Initially, the petitioners evaded their arrest and now when they joined the investigation they are not co-operating in it. Recoveries are yet to be effected from them and rest of the accused persons are also to be interrogated, but the petitioners are not divulging about their whereabouts. He has argued that in case the petitioners are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice, so the bail applications be dismissed.

6. In rebuttal the learned counsel for the petitioner has argued that the petitioners are ready and willing to abide by the terms and conditions of bail, if so granted, they are joining the investigation and co-operating in it. The petitioners are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are residents of the place. He has argued that the custodial interrogation of the petitioners is not at all required, so the bail applications may be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the manner in which the offence is alleged to have been committed by the petitioners, the fact that initially the petitioners absconded, considering the nature of injuries sustained by the complainant, which are grievous, the fact that recoveries are yet to be effected by the police, the petitioners are not disclosing about the whereabouts of the persons who were involved in the incidence, and all other ancillary material, which has come on record and without discussing the same at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour.

8. In view of the above, the petitions, which are devoid of merits, deserve dismissal and are accordingly dismissed.