

(2019) 11 SHI CK 0109

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petitions (M) No. 2073, 2074, 2075 Of 2019

Gaurav Kumar And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 323, 341, 394

Citation : (2019) 11 SHI CK 0109

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Tarun K. Sharma, P.K. Bhatti, Raju Ram Rahi, Gaurav Sharma

Final Decision : Allowed

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. 115 of 2019, dated 24.09.2019, under Sections 394, 323, 341 read with Section 34 IPC, registered in Police Station Damtal, District Kangra, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. The petitioners are residents of Himachal Pradesh 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 24.09.2019 Sh. Ghanshyam Singh (complainant) made a written complaint to the police, wherein he alleged that on 23.09.2019 he alongwith Shri Lovely Kumar and Shri Gaurav Singh went to Jammu for consulting a doctor for his wife. At about 11:10 p.m. he dropped Shri Gaurav Singh at his resident and when he, in his car having

registration No. HP38C-0077, reached R.K. Steel Factory, 3-4 persons were standing there and out of them two were wearing police uniform. These people, after stopping their vehicle, started searching it. The complainant has further stated that these persons took Rs. 5300/- from his wallet and also took Rs. 4000/- from the wallet of Lovely Kumar. Thereafter, they were given beatings and when the asked as to why they were being beaten, the above persons said that the complainant party sells heroin. They were threatened that they will be implicated in a false case of heroin. Thereafter, both, the complainant and Shri Lovely Kumar, were taken on motorcycles to a petrol pump, where through ATM Cards the motorcycles were refueled and SBI ATM Card of the complainant was also swiped for Rs. 4000/-. Later on, all of them left the complainant and Shri Lovely Kumar near their car. They were told to give commission to them in case the complainant and his friend indulge in the business of heroin. They were also threatened with dire consequences. Upon the complaint of the complainant, police registered a case and the investigation ensued. The complainant and Shri Lovely Kumar were medically examined and police prepared the spot map. During the course of investigation, Constable Arun Kumar (co-accused) disclosed that on 23.09.2019, at about 10:00 p.m., he alongwith the petitioners, who are in Police Department, were near R.K. Steel Factory and at about 11:30 p.m. a car, having registration No. HP38C-0077, came, which has two occupants. Co-accused Arun Kumar further disclosed that the vehicle was checked and petitioners Rajesh Kumar, Gaurav Kumar and Puneet Kumar took the occupants of the car, on their motorcycles, towards main road, Sandhed Pul and he kept on standing there. After some time, they came back with the occupants of the car and he alongwith petitioner Gaurav Kumar went on patrol duty towards Toki. Police procured the CCTV footage of petrol pump, which fortifies the incident. Statements of the witnesses were recorded and on 24.09.2019 all the petitioners and co-accused Arun Kumar were arrested and medically examined. Police also procured the relevant bank records and effected apt recoveries. As per the police, report from RFSL, Dharamshala, is awaited. Lastly, it is prayed that the bail application of the petitioners be dismissed, as the petitioners were found involved in a serious crime. There is possibility that in case at this stage they 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 records, 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 residents of Himachal Pradesh and are in service, so they are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping them behind the bars for an unlimited period. He has further argued that custody of the petitioners is not at all required by the police, so the petitions be

allowed and the petitioners be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners have committed a serious crime and in case at this stage 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, so the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the fact that the petitioners are in service, they are permanent residents of Himachal Pradesh, so neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the fact that they 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. 115 of 2019, dated 24.09.2019, under Sections 394, 323, 341 read with Section 34 IPC, registered in Police Station Damtal, District Kangra, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bond in the sum of Rs. 25,000/- (rupees twenty five 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.