
(2019) 09 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1636, 1637 Of 2019

Gopal Singh And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 307, 323, 498A

Citation : (2019) 09 SHI CK 0024

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Vipin Pandit, Shiv Pal Manhans, Raju Ram Rahi, Gaurav Sharma, Raj Kumar

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. 35 of 2019, dated 03.08.2019, under Sections 498A, 307, 323 read with Section 34 IPC, registered Police Station Sadar Solan, District Solan, 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. 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 03.08.2019, Smt. Banita Mehta (complainant) moved a complaint to the police and alleged that she was married to Gopal Singh (petitioner in Cr.MP(M) No. 1636 of 2019) and out of the wedlock two sons were born. The complainant has alleged that petitioner Gopal Singh fell in the habit of gambling and taking liquor. Petitioner Gopal Singh

often used to beat the complainant and on 01.08.2019, at about 10:00 p.m., petitioner Gopal Singh picked up a quarrel with the complainant. Petitioner Gopal Singh, alongwith his brother and mother gave beatings to the complainant and also tried to kill her. Somehow the complainant freed herself from their clutches. Thereafter, the complainant became the patient of depression and she came to the house of her parents. The complainant sought a police action on the premise of the above complaint. Police, on the complaint of the complainant, registered a case and the investigation ensued. Police got the complainant medically examined and on 03.08.2019 petitioner Gopal Singh was arrested and he was also medically examined. Police prepared the spot map and also recorded the statements of the witnesses. On 05.08.2019 petitioner Arun Kumar (devar of the complainant) was also arrested and he was medically examined. On 19.08.2019 the learned Trial Court dismissed the bail applications of petitioners Gopal Singh and Arun Kumar, whereas bail co-accused Kunta Devi (mother-in-law of the complainant) was accepted and she was enlarged on bail by the learned Trial Court on 31.08.2018. During the course of investigation, police lifted the scientific samples and sent the same for forensic analysis to SFSL, Junga, result whereof is still awaited. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were found involved in a serious offence and there is possibility that in case at this stage they are enlarged on bail, they may flee from justice or tamper with the prosecution evidence.

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

5. The learned Counsel for the petitioner 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 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 and the petitioners be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners 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 petitioners 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 the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the medico legal certificate and the photographs of the complainant, the fact that the parties have two minor sons, i.e., one approximately 12 years of age and another approximately 8 years of age, 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 and also considering the overall facts of the case, 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. 35 of 2019, dated 03.08.2019, under Sections 498A, 307, 323 read with Section 34 IPC, registered Police Station Sadar Solan, District Solan, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bonds in the sum of Rs. 10,000/- (rupees ten 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.