
(2013) 11 SHI CK 0037

In the High Court Of Himachal Pradesh

Case No : Criminal MP (M) No. 11692 of 2013

Gurbachan Singh and Another

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 1 Crimes 1 : (2013) 3 ShimLC 1667

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Advocate : Ramesh Sharma, for the Appellant; H.K.S. Thakur, Additional Advocate General with Mr. Ramesh Thakur, D.A.G., for the Respondent

Final Decision : Disposed Off

Judgement

Dev Darshan Sood, J.—The petitioners, who are present in Court, are charged for offences under Sections 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 registered with Police Station, Shimla. FIR No. 198 of 2013 dated 21.10.2013 has been lodged against them. It is submitted by learned Additional Advocate General that offence is non-bailable and in this case no bail can be granted. This submission cannot be accepted.

2. In Baldev Singh Bhardwaj Vs. State of H.P., this Court held:-

7. The first question which arises for consideration is whether accused who is not in custody of the Police can be admitted on 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 res-integra.

9. In Niranjana 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. (at p.56)

3. The petitioners are taken into custody and released on bail subject to their furnishing personal bond in the sum of Rs. 25,000/- each with one surety in the like amount each to the satisfaction of the Additional Registrar (Judicial) on or before 11th November, 2013. It is further directed:

(a) The petitioners shall join the investigation as and when called for by the Investigating Officer.

(b) The petitioners shall not in any manner either directly or indirectly, tamper with the prosecution evidence or in any manner try to overawe, influence or threaten prosecution witnesses.

(c) The petitioners shall not abscond from the jurisdiction of learned Sessions Judge, Una.

(e) They shall not indulge in any anti social activities during the period when they are on bail.

(d) It is clarified that in the event of violation of any of the conditions imposed, the bail shall stand cancelled and the matter referred to this Court.

Petition stands disposed of. It will be open to the parties to apply for modification of this order, if the need so arises.