

(1994) 09 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. (M) No. 570 of 1994

Karam Dass and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 26-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 438, 439, 482
Penal Code, 1860 (IPC) — Section 147, 436, 462, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 18, 3

Citation : (1995) CriLJ 2995 : (1995) 1 ShimLC 363

Hon'ble Judges : D.P. Sood, J

Bench : Single Bench

Advocate : Chhabil Dass and Anand Sharma, for the Appellant; H.L. Karwa, Asstt. A.G., for the Respondent

Judgement

D.P. Sood, J.—92 persons belonging to Rajput community hailing from the village of the complainant have moved this application u/s 439 read with Section 482 Cr. P. C. for their release on bail pursuant to registration of a criminal case vide FIR No. 61 of 1994 for the commission of an offence u/s 3(i), (iii), (iv) and (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 436, 462, 506 and 147 IPC.

2. The complainant as also the petitioners hail from village Terala Hati Buchehr, Tehsil Nirmand, District Kullu, H. P. The dispute as it emerges from the contents of the complaint filed by Sohan Lapertains to two communities in between them interse. Complainant belongs to Harijan party whereas the petitioners hail from Rajput community. Case of the prosecution is that persons belonging to nonscheduled castes have been committing atrocities on the scheduled castes from the very beginning. The complainant party belonging to Scheduled Castes have stopped removing of carcasses which act on their part has offended the Rajput community of their area. It is alleged that on 17-6-1994 at about 11 a.m. one Prem Singh belonging to Scheduled Caste community had gone to offer

flowers to Devta Terala. He had entered into the premises of the said devta and it was noticed by Devinder Singh, one of the petitioners. Said Devinder Singh is Pradhan of Gram Panchayat of the area. He immediately appeared there and slapped the boy twice or thrice and stated that you Dagi, how you dared to offer flowers and touch the devta and further declared that he will set them right so that in future none of the persons belong to Scheduled Caste may dare to do so. It is also alleged that Shri Jati Ram and Pidu Ram witnessed the occurrence and they took Prem Singh to their home. It is alleged that the intention of this act on the part of the aforesaid petitioner was to prevent Scheduled Case persons from offering flowers and prayers to the devta, who as per custom had come in the house of devta on the relevant date and time. The complainant then alleges that he had also brought drinking water to his house through alcatheene pipe from one Nala. Further the prosecution case is that thereafter the petitioner along with other persons of his community (other petitioners) formed an unlawful assembly with the intention to kill the complainant and his family and said Prem Singh by destroying their building by fire. It is also alleged that after having assembled there, the petitioners with the intention to intimidate and humiliate the complainant and his family members publically declared in the following words which are narrated verbatim:

"Tum Dagi Ghar Se Bahar Niklo. Ham Tumhare Ghar Jala Denge. Tum Bahut Sir Par Charh Gaye Hain. Inki Aurtah ki Izzat Loot Lo. Inke Gharon Ko Loot Lo. Aaz Ham Inhen Jaan Se Maar Dalenge."

The openly challenged that you Dagi come out of your house, that they would burn their residential houses as they had crossed the limits of bounds, that let us rape their females and loot them as also kill them. It is alleged that the complainant party hearing the open declaration so made by the accused persons ran away from their houses from the back side towards jungle, hit them there for the whole night. Other allegations are with respect to the conduct of the petitioners in having burnt the alacathene pipe by pouring kerosene oil etc. besides looting their belongings in the form of Thalies, glasses, cookers, Katoris, blankets etc. and burning not only the house but other articles placed inside. It is also alleged that these deeds of the petitioners were intentional with a view not only to humiliate the complainant publically but also to cause substantial pecuniary and mental loss to them. It has also been complained of that they had reported the matter to the police but because of their inaction, Sohan Lal complainant had to file the complaint before the Court of Sub Divisional Judicial Magistrate, Rampur Bushahar for taking legal action thereupon.

3. On this complaint the learned trial Court forwarded the same to the police of police station Nirmand for investigating into the dispute in accordance with Section 156(3) Cr. P. C. In this way the police started investigation and collected some evidence.

4. Shri H. L. Karwa, learned Asstt. Advocate General, has vehemently opposed the application firstly, on the ground of its maintainability and secondly on merits

in view of the serious allegations made against the petitioners and the gravity of the offence committed against the weaker section of the society. He has emphasised on the conduct of the petitioners contending that in case the application is allowed, it would result in the repetition of such like occurrences and it would become difficult for the weaker section to continue residing there in that village. As per him, lawlessness has been created by the petitioners by their conduct in intentionally humiliating and destroying their property and making the atmosphere unsafe for their living in that area. It has, however, been stated that nothing is to be recovered from any one of the petitioners. Further record shows that the burnt articles have been taken into possession, but they have not been sent to the Chemical Examiner or the Forensic Science Laboratory in order to seek their opinion with respect to the use of the material or to know as to the cause or the circumstances in which the same have been burnt.

5. Considering the first contention with respect to the maintainability of the petition, suffice it to state that all the petitioners had surrendered themselves before this Court and they have applied for their release on bail on the ground that none of them have been named in the complaint as also that no prima facie case is made out against any one of them.

6. It is well established that no person accused of an offence can move the Court for bail u/s 439 Cr. P. C. unless he is in custody. As already stated, the accused persons appeared and surrendered themselves before this Court as is apparent from the previous order dated 22-7-1994. In the circumstances, the petitioners can be stated to be in judicial custody when each one of them surrendered before the Court and submitted to its directions. I am fortified in taking this view by the case of Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, . In this view of the matter, the instant petition is maintainable.

7. Now as regards the underlying object of the bail u/s 439 of the Code, suffice it to state that it has to pass approved tests laid down by the Apex Court, namely:

1. In case the accused person is granted bail, whether he would face the trial?
2. In case of the grant of bail, whether he is likely to abuse or misuse the privilege so granted to him?

In case the answer to the two questions is in the positive, the accused person is entitled to be granted bail. It may be stated that there cannot be inflexible rules governing the subject which rests principally with the Court's discretion in the matter of allowance or refusal of bail. Probability or improbability of the prosecution terminating in conviction is not a conclusive consideration for the grant or refusal of bail, particularly in a case in which evidence has not so far been led. For their guidance the Courts also look to other circumstances, which may be determinative, as for example the Courts consider:

- (a) the enormity of the charge,
- (b) the nature of the accusation,

- (c) the severity of the punishment which the conviction will entail,
- (d) the nature of the evidence in support of the accusation,
- (e) the danger of the applicant's absconding if he is released on bail,
- (f) the danger of witnesses being tampered with,
- (g) the protracted nature of the trial,
- (h) opportunity to the applicant for preparation of his defence and access to his counsel, and
- (i) the health, age and sex of the accused.

the aforesaid list of circumstances is not exhaustive but there are other factors also which in peculiar circumstances of the case are to be considered by the Court.

8. No doubt is in the instant case the commission of the offence is alleged to be against weaker section and as per Section 18 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Section 438 of the Code is not applicable in cases of such offences which are found to have been committed under the provisions of the said Act, yet, the petitioners having surrendered before this Court, the other considerations which are relevant for the grant of the bail u/s 439 of the Code are to be viewed in view of the allegations made by the complainant party. Judging the fact so alleged, it is pertinent to note that none of the accused persons except Devinder Singh aforesaid having slapped Prem Singh one of the persons of the complainant party, in the public place while the latter was offering flowers to Devta Seheb Terala, has been named in the complaint. It is also important to note that the complaint has been filed after about 24 hours from the time of occurrence. Apart from it, it is also alleged by the complainant party that a report had been lodged to the police with respect to the occurrence in question but they did not take any action. The police record as has been produced and perused by this Court on the behest of the learned Asstt. Advocate General, shows that no such complaint had been filed. Also except the allegations made against Devinder Singh with respect to the slapping of the boy in open place, no other petitioner has been named nor it has been pointed out as to in what manner and what part has been placed by each one of them. No doubt evidence of 18 witnesses has been recorded by the police and therein they have divulged against 24 petitioners having committed the offence in a particular manner, yet their names being absent in the complaint and also in view of the fact that it is a rival faction in between two communities as well and the prosecution witnesses belonging to complainant party, it would be in the interest of justice to allow the application of the petitioners for grant of bail, in view of the fact that all the accused persons have been alleged to have committed offence jointly. At this stage, the impact of the statement of each witness of the prosecution need not be commented upon else it may affect the case of the prosecution. However, keeping in view the basic principle that the accused

persons, namely, the petitioners have undertaken to face the trial and to cooperate with the investigation coupled with the fact that after 17-6-1994 there has been no allegation as to the repetition of the offence by any one of them, the petitioners are ordered to be released on bail subject to each one of them furnishing bail bond in the sum of Rs. 5000/- with one surety each in the like amount to the satisfaction of the Sub Divisional Judicial Magistrate, Rampur Bushehar, within two weeks from the date of this order. It is made clear that this order shall be subject to the conditions laid down in Section 438 of the Code. Further, in case any one of the petitioners is needed by the prosecution for investigation purposes he would be intimated in writing by the investigating agency. The application stands disposed of. Dasti copy.