

(2020) 05 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : CRMMO No. 170 Of 2020 a/W Cr.MMOs No. 171, 172, 173 Of 2020

Kikker Singh And Ors

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439, 482

Indian Penal Code, 1860 — Section 506, 509

Scheduled Caste And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)

Citation : (2020) 05 SHI CK 0038

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Suman Thakur, Somesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. All these petitions are being disposed of by a common order being arisen out of the same FIR.

2. These petitions have been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to 'Cr.P.C.' for short) praying for grant of bail in FIR No. 112 of 2020, dated 12.05.2020, registered at Police Station Bhoranj, District Hamirpur, H.P. under Sections 506 and 509 of the Indian Penal Code (hereinafter referred to 'IPC' for short) and Section 3(1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "1989 Act" for short). The petitioners are accused therein.

3. Learned Additional Advocate General has pointed out that these petitions under Section 482 of the Cr.P.C are not maintainable as the only remedy which is available to the petitioners is to seek regular bail under Section 439 of the Code

of Criminal Procedure.

4. Learned Counsel for the petitioners submits that taking into consideration the fact that there is lockdown as well as curfew imposed in the State of Himachal Pradesh on account of spread of Corona pandemic, it is not physically possible for the petitioners to appear before a Court and then surrender themselves to seek regular bail under Section 439 of the Code of Criminal Procedure. Accordingly, she prays that this Court may in exercise of its inherent powers under Section 482 of the Criminal Procedure Code stay the arrest of the petitioners for some reasonable time to enable them to approach the appropriate Court of law to seek regular bail under Section 439 of the Criminal Procedure Code.

5. I have heard learned Counsel for the petitioners as well as taken into consideration the submissions which have been made on behalf of the respondent-State.

6. Admittedly, in view of the statutory provisions of the 1989 Act, anticipatory bail cannot be granted to a person who is alleged to have committed an offence under the said Act. However, it is also not in dispute that in cases where a person is alleged to have committed an offence under the above Act, application under Section 439 of the Criminal Procedure Code is maintainable even if the accused has not been formally arrested as the accused can surrender before the Court and on that count, on the basis of his said voluntary surrender, he can be released on bail under Section 439 of the Criminal Procedure Code if the Court so deems it appropriate in the facts and circumstances of the case.

7. Coming to the facts of this case, learned Counsel for the petitioner has submitted that the reason as to why this petition has been filed under Section 482 of the Criminal Procedure Code is that as the petitioners are from District Hamirpur of the State of Himachal Pradesh and on account of lockdown and curfew which is in place in the State, they are not in a position to physically appear in the Court and thus surrender themselves. It is in these circumstances that the petitioners have invoked the inherent powers of this Court under Section 482 of the Criminal Procedure Code to prevent the abuse of process of Court and to secure the ends of justice.

8. Though, the appropriate course for the petitioners, in my considered view, is to approach appropriate Court under Section 439 of the Criminal Procedure Code by surrendering themselves before the said Court, and thereafter, apply for regular bail. However, this Court cannot be oblivious to the fact that in the extraordinary times in which we are living today, the petitioners cannot be left remedy-less.

9. Section 482 of the Criminal Procedure Code enables this Court to make such orders as may be necessary to give effect to any order under the Criminal Procedure Code or to prevent abuse of process of any Court or otherwise to secure the ends to justice. In the facts of the present case, the ends of justice can be secured by invoking the inherent powers of this Court under Section 482

of the Criminal Procedure Code by giving a temporary respite to the petitioners against their arrest with regard to the FIR supra and by directing them to approach the appropriate Court of law, which may be this Court also, if they so desire, under Section 439 of the Criminal Procedure Code.

10. Accordingly, as agreed upon, these petitions are disposed of with the direction that the petitioners shall not be arrested with regard to FIR No. 112 of 2020, dated 12.05.2020, registered at Police Station Bhoranj, District Hamirpur, H.P. under Sections 506 and 509 of the Indian Penal Code (hereinafter referred to 'IPC' for short) and Section 3(1) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act, 1989), uptill 05.06.2020 to enable them to approach the appropriate Court of law, including this Court, for grant of bail under Section 439 of the Code of Criminal Procedure.

11. Learned Counsel for the petitioners is given the liberty to inform the concerned Station House Officer of the order so passed by this Court today.

12. All the petitions stand disposed of in above terms, so also pending miscellaneous application(s), if any.