

(2013) 11 SHI CK 0031

In the High Court Of Himachal Pradesh

Case No : Criminal MP (M) No. 11695 of 2013

Shri Santosh Kumar

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2013) 11 SHI CK 0031

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Advocate : Anup Chitkara, for the Appellant; P.M. Negi, D.A.G. and Mr. R.P. Singh, Assistant Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Dev Darshan Sud, J.—Petitioner is present in Court. He has been charged for the offence u/s 3(1)(x) of the Prevention of Atrocities against Scheduled Castes and Scheduled Tribes, Protection Act. Learned counsel appearing for the petitioner relies upon the decision of this Court in Baldev Singh Bhardwaj Vs. State of H.P., who prays for grant of bail. In Baldev Singh Bhardwaj's case supra, this Court held:

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.

11. As the accused is no longer required by the police and nothing is to be recovered from him, the fact that the offence allegedly took place on 10th February, 2003, but the First Information Report was lodged in March, 2003 and the further fact that there is no likelihood of the petitioner fleeing away from the justice, I allow the application (P. 56)

In these circumstances, the petitioner is taken into custody and released. I direct that the petitioner shall not be arrested in connection with F.I.R. No. 70 of 2013 lodged at Police Station, Parwanoo, District Solan. He shall report to Police Station, Parwanoo, District Solan on 16th November, 2013 at 10 A.M. The petitioner shall be released on bail on furnishing personal bonds in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of Judicial Magistrate, Ist Class, Kasauli, District Solan by 14th November, 2013. It is further directed that:

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

(b) The petitioner 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 petitioner shall not abscond from the jurisdiction of learned Sessions Judge, Shimla.

(e) The petitioner shall not indulge in any anti social activities during the period when he is 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.

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

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