IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2453/2019

Date of decision : 2nd January, 2020

Vikram Singh

… Petitioner.

Versus

State of Himachal Pradesh

…Respondent

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1]

For the Petitioner : Ms. Shilpa Sood, Advocate.

For the Respondent : Mr. Nand Lal Thakur, Additional Advocate General for the State.

Anoop Chitkara, Judge (oral)

The petitioner, who is on ad-interim bail, because of being arraigned as an accused in FIR No. 184/2019, under Sections 341, 504, 506 and 427 of the IPC and Section 3(1)(r&s) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Amended Act, 2015 (hereinafter referred to as 'SCST Act'), dated 25.12.2019, registered in the file of Police Station, Amb, District Una, HP, came up

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

under Section 439 CrPC, surrendered before this Court and simultaneously obtained ad-interim bail.

2. Ms. Shilpa Sood, learned counsel for the petitioner, submits that in compliance to the order dated 26.12.2019, affidavit of the petitioner has been filed in the Registry. The counsel handed over copy of the same, which shows that only case pending against the petitioner relates to offence punishable under Section 304-A of the Indian Penal Code. Registry to place on record the affidavit, even if it is under objection.

3. Dy. S.P/SDPO, Amb, Shri Manoj Jamwal and Addl. SHO, Sushil Kumar, Police Station, Gagret are present in person. The status report filed and taken on record. I have seen the status report(s) as well as the police file to the extent it was necessary for deciding the present petition, and the same stands returned to the police official. On 26.12.2019, this Court passed an interim order, directing the petitioner to be enlarged on bail on petitioner's furnishing personal bond and the said interim order is in operation till date.

4. I have heard Ms. Shilpa Sood, learned counsel for the petitioner and Mr. Nand Lal Thakur, learned Additional Advocate General for the respondent/State.

5. The counsel for the petitioner states that the accused had joined the investigation as and when the Investigating Officer so directed him. Learned Additional Advocate General did not dispute this averment.

FACTS:

6. The gist of the First Information Report, investigation and petition, is as follows:

(a) That the bail petitioner allegedly wrongfully restrained the complainant from moving ahead and threated with dire consequences. Also, he used the words which are prohibited under the provisions of the Act.

(b) That the allegations are false, wrong and baseless and the petitioner has no connection with the said offence.

(c) Hence, the present F.I.R. under the provisions of Section 3(1)(r&s) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Amended Act, 2015 and Sections 341, 504, 506 and 427 of the Indian Penal Code, was registered.

7. REASONING:

a) The petitioner had joined the investigation.

b) In the status report, there is no mention of previous criminal history of the bail petitioner.

c) The petitioner is a permanent resident of address mentioned in the memo of parties. Therefore, her presence can always be secured.

d) I am satisfied that the no purpose will be served if the bail petitioner is sent to judicial custody.

e) I am of the considered view that, *prima facie*, petitioner has made out a case for grant of bail. Her custodial interrogation is not required at all.

8. Sections 18 & 18-A of SCST Act, 1989, bar the rights of anticipatory bail under Section 438 of the Code of Criminal Procedure. The provisions read as under:-

> "18. Section 438 of the Code not to apply to persons committing an offence under the Act.—Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.
>
> "18A. (1) For the purposes of this Act,— (a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or (b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply. (2) The

> provisions of section 438 of the Code shall not apply to a case under this Act, notwithstanding any judgment or order or direction of any Court."

9. It is no more *res-integra* that provisions of Section 438 of the Code of Criminal Procedure are not applicable in cases registered under the provisions of SCST Act.

10. In *State of M.P. v. Ram Kishan*, 1995(3) SCC 221, Supreme Court upheld the Constitutional validity of Section 18 of SCST Act, holding:-

> "9. Of course, the offences enumerated under the present case are very different from those under the Terrorists and Disruptive Activities (Prevention) Act, 1987. However, looking to the historical background relating to the practice of "Untouchability" and the social attitudes which lead to the commission of such offences against Scheduled Castes and Scheduled Tribes, there is justification for an apprehension that if the benefit of anticipatory bail is made available to the persons who are alleged to have committed such offences, there is every likelihood of their misusing their liberty while on anticipatory bail to terrorise their victims and to prevent a proper investigation. It is in this context that Section 18 has been incorporated in the said Act. It cannot be considered as in any manner violative of Article 21.

10. It was submitted before us that while Section 438 is available for graver offences under the Penal Code, it is not available for even "minor offences" under the said Act. This grievance also cannot be justified. The offences which are enumerated under Section 3 are offences which, to say the least, denigrate members of Scheduled Castes and Scheduled Tribes in the eyes of society, and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of Scheduled Castes and Scheduled Tribes with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Penal Code.

11. A similar view of Section 18 of the said Act has been taken by the Full Bench of the Rajasthan High Court in the case of Jai Singh v. Union of India, AIR 1993 Rajasthan 177 and we respectfully agree with its findings.

12. In the premises, Section 18 of the said Act cannot be considered as violative of Articles 14 and 21 of the Constitution."

11. In *Vilas Pandurang Pawar v. State of Maharasthra*, 2012 (8) SCC 795, Supreme Court holds as under:-

"9. The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no

> Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence."

12. Supreme Court relied upon this precedent in, *Bachu Das v. State of Bihar*, 2014(1) R.C.R. (Criminal) 975.

13. In *Niranjan Singh v. Prabhakar Rajaram Kharote*, 1980 Cri.LJ 426, Justice V.R. Krishna Iyer, J., speaking for the bench of Supreme Court, holds as follows:-

> "8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or an least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.
>
> 9. 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 directions. In the

present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and may be, enabled the accused persons to circumvent the principle of Section 439 Criminal Procedure Code We might have taken a serious view of such a course, indifferent to mandatory provisions by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but sitting under Article 136 do not feel that we should interfere with a discretion exercised by the two courts below."

14. In *Sundeep Kumar Bafna v. State of Maharashtra*, AIR 2014 SC 1745, Supreme Court holds:-

"….8….Like the science of physics, law also abhors the existence of a vacuum, as is adequately adumbrated by the common law

maxim, viz. where there is a right there is a remedy'. The universal right of personal liberty emblazened by Article 21 of our Constitution, being fundamental to the very existence of not only to a citizen of India but to every person, cannot be trifled with merely on a presumptive plane. We should also keep in perspective the fact that Parliament has carried out amendments to this pandect comprising Sections 437 to 439, and, therefore, predicates on the well established principles of interpretation of statutes that what is not plainly evident from their reading, was never intended to be incorporated into law. Some salient features of these provisions are that whilst Section 437 contemplates that a person has to be accused or suspect of a non-bailable offence and consequently arrested or detained without warrant, Section 439 empowers the Session Court or High Court to grant bail if such a person is in custody. The difference of language manifests the sublime differentiation in the two provisions, and, therefore, there is no justification in giving the word `custody' the same or closely similar meaning and content as arrest or detention. Furthermore, while Section 437 severally curtails the power of the Magistrate to grant bail in context of the commission of non-bailable offences punishable with death or imprisonment for life, the two higher Courts have only the procedural requirement of giving notice of the Bail application to the Public Prosecutor, which requirement is also ignorable if circumstances so demand. The regimes regulating the powers of the Magistrate on the one hand and the two superior Courts are decidedly and intentionally not identical, but vitally and drastically dissimilar. Indeed, the only complicity that can be contemplated is the conundrum of

> `Committal of cases to the Court of Session' because of a possible hiatus created by the CrPC."
>
> "… 26… Once the prayer for surrender is accepted, the Appellant before us would come into the custody of the Court within the contemplation of Section 439 CrPC. The Sessions Court as well as the High Court, both of which exercised concurrent powers under Section 439, would then have to venture to the merits of the matter so as to decide whether the applicant/Appellant had shown sufficient reason or grounds for being enlarged on bail."

15. A Bench of this Court in *Karam Dass and others v. State of H.P.*, 1995 (1) Shim.L.C 363, accepted the surrender of the persons who had been arraigned as accused in an FIR under SCST Act, and released them on bail, by exercising its powers under section 439 CrPC.

16. In, Jones versus State, 2004 Cr.LJ 2755, Madras High Court, observed:-

> "16. This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is

alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them."

17. In Dr. N.T. Desai vs. State of Gujarat, (1997) 2 GLR 942, High Court of Gujrat, observed:

"… 8…. But then having closely examined the complaint more particularly in the context and light of the backdrop of the peculiar facts situation highlighted by the petitioner leading ultimately to filing of the complaint, this Court prime facie at the very outset is at some doubt about the complainant's story and yet if it readily, mechanically like a gullible child accepts the allegations made in the complaint at its face value, it would be surely blundering and wandering away from the path of bail-justice, making itself readily available in the hands of the scheming complainant who on mere asking will get arrested accused on some false allegations of having committed non-bailable offence, under the Atrocity Act, meaning thereby the Court rendering itself quite deaf, dumb and blind mortgaging its commonsense, ordinary prudence with no perception for justice, denying the rightful protection to the accused becoming ready pawn pliable in the hands of sometime scheming, unscrupulous complainants !!! This sort of a surrender to prima facie doubtful allegation in the complaint is not at all a judicial approach, if not unjudicial !! At the cost of repetition, 1 make it clear that these observations are only preliminary, at this stage

only in peculiar background of the case highlighted by petitioner-accused and for that purpose may be even in future be so highlighted by the accused in some other cases to the satisfaction of the Court ! The reason is having regard to the basic cardinal tenets of the criminal jurisprudence more particularly in view of the peculiar circumstances highlighted by the accused which allegedly actuated complainant to victimise him, in case if ultimately at the end of trial what the accused has submitted in defence is accepted as probable or true and as a result, the accused is given a clean bill, holding that the complaint was nothing else but false, concoction by way of spite to wreck the personal vengeance then in that case what indeed would be the remedy and redresses in the hands of the petitioner, who in the instant case is Doctor by profession and for that purpose in other cases an innocent citizen? He stands not only stigmatised by filing of a false complaint against him but he shall stand further subjected to trial !! Not only that but before that even subjected to arrest before the public eye and taken to Special Court where only he could pray for bail ! Thus, subjected to all sort of agonies, pains and sufferings lowering his image and esteem in the eye of public because the Court when approached adopted the helpless attitude? Under such bewildering circumstances, what indeed would be the face of the Court and the fate of the Administration of Justice denying bail to some victimised innocent accused at crucial stage when he surrenders to the Court custody for the purpose?!! Should the Court proclaiming doing justice stand befooled at the hands of some mischievous complainant with head-down in shame !! Supposing for giving false evidence before the Court, the

complainant is ordered to be prosecuted, but then will such prosecutions of complainant bring back the damage already done to an innocent !! Bearing in mind this most embarrassing and excruciating situation created by the complainant when, this Court as a Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint denying simple bail to the accused? In this regard, perhaps, it may be idly said that accused can be given compensation for the malicious prosecution 22 and ultimate refusal of bail or anticipatory bail !! True, but then in that case what compensation can any Court would be in a position to give when the complainant is a person who is poor enough unable to pay a single pie?!! Not only that but in case complainant is rich and able to pay compensation then even can any monetary compensation ever adequately compensate the wrong accused suffered at the hands of the malicious complainant? It is here that the conscience of this Court stands pricked and terribly perturbed and indeed will have a sleepless night if what ought we do not know where the petitioner, in the facts and circumstances of the case be quite innocent and accordingly a needy consumer of bail justice and yet is unnecessarily subjected to arrest taken to the police custody and then before Court because of denial of bail to him at this stage !!"

18. The practice of accused surrendering before Sessions Court or High Court and thereby obtaining *ad-interim* bail, cannot be

said to be with a view to override the legislative intention of restraining the anticipatory bail to the violators of the SCST Act. If the allegations are serious, keeping in view the object of the SCST Act and the purpose for which this stringent provision in SCST Act was enacted, then certainly, such kind of accused would not be permitted to take advantage of *ad interim* bails. However, when prima facie, the Court notices that the provisions have been used as a tool to send people in custody, then in such cases, it shall be prudent, proper and legal to grant *ad-interim* bail. The Courts cannot be mute spectators, even when from the face of the allegations, it is seen that the provisions of the SCST Act have been invoked simply with a view to deny the benefit of Section 438 of the Code of Criminal Procedure.

19. At this stage, reference is being made to Section 437 of the Code of Criminal Procedure where the Legislature has mandated that the provisions of bail for woman are not stringent.

20. In the result, the present petition is allowed. The interim order dated 26.12.2019, is also made absolute, subject to further the following conditions:

a) The petitioner is directed to continue to join the investigation as and when called by the investigating officer and the petitioner

undertakes to appear before the investigating officer as and when directed to do so. However, whenever the investigation takes place within the boundaries of the Police Station or Police Post, then the accused shall not be called before 9 A.M. and shall be let off before 5 P.M.

b) The petitioner shall co-operate in the investigation.

c) The petitioner shall not hamper the investigation.

d) The petitioner undertakes not to contact the complainant and witnesses to threaten or browbeat them or to use any pressure tactics.

e) The petitioner shall neither influence nor try to control the investigating officer in any manner whatsoever.

f) The petitioner undertakes not to make any inducement threat or promise, directly or indirectly, to the investigating officer or any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or any police officer or tamper with the evidence.

g) In case the accused is put to the trial, then the petitioner shall appear before the Court which issues the summons or warrants and shall furnish fresh bail bonds to the satisfaction of such Court.

h) In case, the petitioner is arraigned as an accused of the commission of any offence, prescribing the sentence of

imprisonment of ten years or more, then within thirty days of knowledge of such FIR, the petitioner shall intimate the SHO of the present Police Station, with all the details of the present FIR as well as the new FIR. It shall be open for the State to apply to this Court, for cancellation of this bail, if it deems fit and proper.

i) The petitioner shall either sell or deposit all the fire arms alongwith ammunition and arms licences, if taken, before the concerned authorities within thirty days from today.

21. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, against the Petitioner.

Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above. Petition stands allowed in the aforesaid terms.

Copy Dasti.

(Anoop Chitkara),
Judge.

2nd January, 2020 ***(KS)***