

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

-.-

**CRM-M- 41930-2020 (O&M)**

**Date of decision : 18.01.2021**

Mohan Singh & Another

.....Petitioners

Vs.

State of Punjab

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE ALKA SARIN**

Present: Mr. Harsh Chopra, Advocate for the petitioners.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

Mr. Pandit Vinod Sharma, Advocate for the complainant.

**ALKA SARIN, J.**

Heard through video conferencing.

This is a petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the petitioners in FIR No.43 dated 17.03.2020 under Sections 406, 498-A of the Indian Penal Code, 1860 ('IPC' for short) and Section 3(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SCST Act' for short) registered at Police Station Goraya, District Jalandhar.

Before advertizing to the present FIR, a few facts need to be noticed. The petitioners are the parents of Sarabjit Singh who is married to the complainant, Morinna Kumari. The complainant is a British citizen by birth and the aforesaid Sarabjit Singh used to reside in India before his marriage. The marriage of the complainant and Sarabjit Singh was solemnized on 23.02.2017 at village Manawali,

Tehsil Phagwara, District Kapurthala. The complainant came to India for solemnizing her marriage and returned to England in April 2017. In July 2019 Sarabjit Singh went to England to join the company of the complainant. However, differences arose between the parties.

The complainant lodged the present FIR on 17.03.2020 against her husband (Sarabjit Singh), father-in-law (Mohan Singh-petitioner No.1), mother-in-law (Jaswinder Kaur-petitioner No.2) and other members of her husband's family.

The petitioners approached the Court of the Additional Sessions Judge, Jalandhar for grant of anticipatory bail. However, vide order dated 03.06.2020 (Annexure P-2) the petition for grant of anticipatory bail petition filed by both the petitioners was dismissed by Additional Sessions Judge, Jalandhar on the ground that there is bar as far as grant of anticipatory bail is concerned under Section 18 of the SCST Act. Thereafter, the petitioners approached this Court by filing a petition under Section 438 CrPC for grant of anticipatory bail. The said petition being CRM-M-16317-2020 was dismissed on 04.08.2020 (Annexure P-3). The petitioners thereafter approached the Supreme Court by filing a Special Leave to Appeal (Crl.) No.4179 of 2020. The matter was finally disposed off by the Supreme Court vide order dated 16.11.2020 (Annexure P-6) which reads as under:

*“1. The High Court of Punjab and Haryana declined to grant anticipatory bail under Section 438 of the Criminal Procedure Code, 1973. In view of the bar contained in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 against the*

*grant of pre-arrest bail. The view of the High Court cannot be held to be erroneous.*

*2. Having due regard to the fact that the petitioners were granted an ad interim protection against arrest by the order of this Court dated 11<sup>th</sup> September 2020, we extend the protection by a further period of three weeks from today. It would be open to the petitioners to surrender before the competent court and apply for regular bail and if such an application is made, it shall be considered expeditiously.*

*3. The Special Leave Petition is accordingly disposed of.*

*4. Pending applications, if any, stand disposed of”.*

Thus, the petitioners were provided three weeks’ further protection against arrest w.e.f. 16.11.2020 and it was left open to them to surrender before the competent Court and to apply for regular bail and, if such an application was made, it was directed to be considered expeditiously.

On 18.11.2020 the petitioners filed an application (Annexure P-7) for acceptance of surrender and for bail before the Judicial Magistrate, 1<sup>st</sup> Class, Phillaur. In para 9 of the application (Annexure P-7) it was averred that *“That in terms of the aforesaid order passed by the Hon’ble Supreme Court of India, the applicants/accused want to surrender before this Hon’ble Court, hence this application”*. The prayer in the application (Annexure P-7) reads: *“It is, therefore, respectfully prayed that the surrender of the applicants/accused, may kindly be accepted and they may kindly be*

*ordered to be released on bail for the reason as stated above, in the interest of justice”.*

Vide order dated 18.11.2020 (Annexure P-8) the Judicial Magistrate, 1<sup>st</sup> Class, Phillaur held that *“Since the offence under Section 3(i)(r) SC/ST (Prevention of Atrocities) Act, 1989 are not triable by this Court, therefore, this Court is not competent to grant regular bail to the applicants/accused. Hence, the application for regular bail is hereby dismissed, in above terms.”* Thus, neither was the surrender by the petitioners accepted nor were they granted bail by the Judicial Magistrate, 1<sup>st</sup> Class, Phillaur.

The petitioners, thereafter, approached the Court of the Additional Sessions Judge, Jalandhar on 19.11.2020 for grant of regular bail under Section 439 CrPC. Vide order dated 01.12.2020 (Annexure P-9) the regular bail application filed by the petitioners was dismissed on merits by the Additional Sessions Judge, Jalandhar.

The petitioners have now approached this Court under Section 439 CrPC for grant of regular bail.

Learned counsel for the petitioners would contend that totally false allegations have been levelled against the petitioners and they have been falsely implicated in the case. He further contended that no offence under the SCST Act was attracted as no insult was made in public view. Learned counsel further submitted that the petitioners had joined the investigation and were cooperating with the Police and, thus, be granted bail.

Countering the submissions made by the counsel for the petitioners, learned State counsel and counsel for the complainant have contended that the present petition for grant of regular bail

cannot be considered since the petitioners have failed to comply with the order dated 16.11.2020 (Annexure P-6) passed by the Supreme Court. According to counsel, before the petitioners' request for regular bail can be considered they have to surrender before the competent court which they have not done.

In rebuttal, counsel for the petitioners contended that the protection given to the petitioners by the Supreme Court would amount to deemed custody and the petitioners were permitted to file the application for regular bail without physically surrendering. He submitted that the deemed custody of the petitioners would not be restricted to the three weeks' period as mentioned in the order of the Supreme Court (Annexure P-6) but would extend even thereafter. Learned counsel would further contend that though the three weeks period granted by the Supreme Court expired on 08.12.2020, however, the petitioners would still be protected under the orders passed by the Supreme Court and that the present application for bail would be maintainable. In support of his arguments learned counsel for the petitioners has relied upon **Ami Chand v. State of Himachal Pradesh**[2020(4) RCR(Cri.) 516 (HP)], **Sundeep Kumar Bafna v. State of Maharashtra**[AIR 2014 (SC) 1745], **Niranjan Singh v. Prabhakar Rajaram Kharote**[AIR 1980 (SC) 785] and **Nirmal Jeet Kaur v. State of Madhya Pradesh**[2004(7) SCC 558].

I have heard learned counsel for the parties. The order dated 16.11.2020 (Annexure P-6) passed by the Supreme Court is explicit that the petitioners have to surrender before the competent court and apply for regular bail. Thus, their surrender has to precede consideration of their application for regular bail. However, till today

the petitioners have not surrendered, or even offered to surrender, before the competent court or even before this Court. There is no averment in the present petition that the petitioners are surrendering before this Court or even offering to surrender. The order passed by the Additional Sessions Judge, Jalandhar (Annexure P-9) also does not disclose that the petitioners surrendered before that Court or even offered to surrender. The order dated 16.11.2020 (Annexure P-6) passed by the Supreme Court makes it clear that the only competent court before whom the petitioners can surrender is the Court which can entertain their application for regular bail. The petitioners cannot offer to surrender before any Court, whether having jurisdiction to try the offences under the SCST Act or not, and apply for regular bail under Section 439 CrPC before the Sessions Court or this Court.

The contention of the counsel for the petitioners that the protection given to the petitioners by the Supreme Court would amount to their deemed custody and the petitioners were permitted to file the application for regular bail without physically surrendering is not tenable. Such an interpretation of the order dated 16.11.2020 (Annexure P-6) cannot be arrived at either explicitly nor impliedly. Even in *Ami Chand's* decision (supra) relied upon by the counsel for the petitioners it is mentioned that *“Every person in custody has a statutory right to apply for bail, and denial of such a request would directly conflict with Article 21 of India's Constitution. However, any person applying for bail under S.439 CrPC must fulfill twin conditions, (i) Having been accused of some non-bailable offence, and (ii) In custody impliedly for the said offence. In the absence of any restrictions imposed by the Scheduled Castes and Scheduled Tribes*

*(Prevention of Atrocities) Act, 1989 on the powers of Courts under S. 439 CrPC, any person against whom accusations have been made of committing an offence under SCSTPOA would be entitled to seek bail under S. 439 CrPC provided she is in custody or offers to do so".* The petitioners are neither in custody nor offered to surrender before a competent court.

Since the petitioners have failed to comply with the order dated 16.11.2020 (Annexure P-6) passed by the Supreme Court and have not surrendered or even offered to surrender before the competent court, this Court cannot entertain, on merits, the present petition for grant of regular bail under Section 439 CrPC. The petitioners, whose plea for grant of anticipatory bail, was dismissed right upto the Supreme Court, have been evading arrest and are now misconstruing and trying to take advantage of a concession granted by the Supreme Court while disposing off their petition i.e. Special Leave to Appeal (Crl.) No.4179 of 2020. The sine qua non for filing a petition under Section 439 CrPC is that the petitioner has to be in custody. The term custody, though not defined in the CrPC, has been interpreted through various judicial pronouncements. It was held by the Supreme Court in the case of Niranjana Singh's case (supra) as under:-

*"6. Here the respondents were accused of offences but were not in custody, argues the petitioner. So no bail, since this basic condition of being in jail is not fulfilled. This submission has been rightly rejected by the courts below. We agree that, in our view, an outlaw cannot ask for the benefit of law and he who flees justice cannot claim justice. But here the position is different. The accused were not absconding but had appeared*

*and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of the court to be enlarged. We agree that no person accused of an offence can move the court for bail under Section 439 Criminal Procedure Code, 1973 unless he is in custody.*

*7. When is a person in custody, within the meaning of Section 439 Criminal Procedure Code, 1973 ? When he 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. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straight forwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.*

*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 maybe, enabled the accused persons to circumvent the principle of Section 439 Criminal Procedure Code, 1973. 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”.*

In the present case the petitioners only moved for surrender before Judicial Magistrate, 1<sup>st</sup> Class, Phillaur. Neither their application for surrender nor the application for grant of regular bail was considered by the Judicial Magistrate, 1<sup>st</sup> Class, Phillaur on the

ground that it was not the competent court. Thereafter, it appears that no application for surrender was moved by the petitioners before the Additional Sessions Judge, Jalandhar and none was moved before this Court. Infact, before this Court despite the specific objection having been raised by the State counsel and the counsel for the complainant regarding maintainability of the present petition without the petitioners surrendering, no offer to surrender was still made by the petitioners.

This Court has not delved into the merits of the matter inasmuch as the petition is found to be not maintainable in the absence of the petitioners having surrendered which is a sine qua non for entertaining a petition under Section 439 CrPC. The citations referred to by the learned counsel for the petitioner do not support the argument raised by the petitioner that the order dated 16.11.2020 would amount to the petitioner being in deemed custody and that the present petition would be maintainable without the petitioners surrendering or offering to surrender before the Court of Additional Session Judge or before this Court.

In view of the discussion above, this Court finds merit in the objection raised by the counsel for the State and the complainant. The petitioners have failed to comply with the order dated 16.11.2020 (Annexure P-6) passed by the Supreme Court and, as such, this Court is unable to consider the present petition for regular bail on merits. Dismissed.

No part of this order shall be taken to be an expression of opinion by this Court on the merits of the case.

18.01.2021  
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(ALKA SARIN)  
JUDGE

NOTE: Whether speaking/non-speaking: Yes/No  
Whether reportable: Yes/No