

KAMAL SHARMA VS STATE OF HARYANA

Present: None for the petitioner.
Mr. Samarth Sagar, Addl. A.G., Haryana

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On 18.12.2020, the following order was passed:-

“The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

The petitioner prays for grant of pre-arrest bail in a criminal case arising from FIR No.432 dated 30.08.2019, registered under Section 306/34 IPC and Section 3(2) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act 1989 (offence under section 216/201/420/506 IPC and Section 3(1)(a)(s) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act, 1989 have been added lateron), registered at Police Station Shahabad, District Kurukshetra.

Notice of Motion, for 18.01.2021.

On the request of the Court, Sh. Samarth Sagar, Additional Advocate General, Haryana, accepts notice on behalf of the State.

Heard learned counsels for the parties.

In fact, the petitioner has already been granted pre-arrest bail vide order dated 16.11.2019 which reads as under:-

On 19.10.2019, following order was passed:-

“Petitioner prays for grant of anticipatory bail in FIR No.432 dated 30.08.2019 registered under Sections 306 and 34 of the Indian Penal Code and Section 3(2) of SC & ST Act, at Police Station Shahabad, District Kurukshetra.

Learned counsel for the petitioner relies upon order dated 17.10.2019 passed in CRM-M-44094-2019 while granting interim protection to co-accused in the FIR in question.

Notice of motion.

On asking of the Court, Mr. Manish Bansal, DAG, Haryana accepts notice on behalf of State of Haryana and seeks time to get instructions.

Adjourned to 16.11.2019.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However,

the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) Cr.P.C.”

Learned State counsel, on instructions from the Investigating Officer, who is present in Court, has submitted that the petitioners in this case have joined the investigation, cooperated and are not required for further custodial interrogation.

In view thereof, interim order dated 19.10.2019 passed by this Court is made absolute.

Accordingly, the present petition is allowed.”

On completion of the investigation, the challan (the final report under Section 173 Cr.P.C) has already been filed.

The learned Sub Divisional Judicial Magistrate, Shahbad, vide order dated 23.11.2019 released the petitioner on regular bail which reads as under:-

Challan presented today. It be checked and registered. Along with the challan accused above named have also produced before the court. Regular bail application moved on behalf of the above named persons. Certified copy of order dated 16.11.2019 passed by the Honble High Court has also been received vide which the interim bail already granted by the Honble High Court vide order dated 17.10.2019 has been made absolute vide order dated 16.11.2019. Heard. Keeping in View the fact that the challan has been presented in the court and interim bail granted to the accused persons vide order dated 17.10.2019 has been made absolute vide order dated 16.11.2019, above named accused persons are granted regular bail on their furnishing bail bonds in the sum of Rs 1,00,000/- each with one surety in the like amount. Requisite bail bonds furnished, accepted and attested. Now to come up on 7.12.2019 the date already fixed.”

However, it appears that subsequently offences under the Schedule Castes and Schedule Tribes Prevention of Atrocities Act, 1989 and Section 216/201/420/506 IPC have been added giving rise to the apprehension that the petitioners may be arrested.

The petitioners filed an application before the

learned Additional Sessions Judge, Kurukshetra, which has been ordered to be dismissed, on 10.12.2020.

In view of the facts and circumstances of the present case and more particularly the orders passed by this order on 16.11.2019 as also the order dated 23.11.2019 passed by the trial court, there is no ground to grant another opportunity to the prosecuting agency to carry out any further interrogation.

*The bar under Section 18 of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act, 1989 is not absolute. In the appropriate cases the court is entitled to examine the case and grant relief. Reference in this regard can be made to para 79.2 of the judgment in **Dr Subhash Kashinath Mahajan versus State of Maharashtra and another, 2018(6) SCC 454** which has never been over ruled in the subsequent judgments.*

In view thereof, the present petition is allowed. The petitioner shall be deemed to have granted bail in FIR No.432 dated 30.08.2019, registered under Section 306/34 IPC and Section 3(2) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act 1989 (offence under section 216/201/420/506 IPC and Section 3(1)(a)(s) of the Schedule Castes and Schedule Tribes Prevention of Atrocities Act, 1989 have been added lateron), registered at Police Station Shahabad, District Kurukshetra.”

In view of the aforesaid order, no further order is required to be passed.

The present petition is disposed of.

January 18, 2021
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(ANIL KSHETARPAL)
JUDGE