

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

Cr.MP(M) No. 668 of 2020.

Date of Decision: May 20, 2020.

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Saroj Kumari

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

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*Coram:*

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

*Whether approved for reporting?*<sup>1</sup> **YES.**

For the petitioner : Mr. Sanjeev Kumar Suri, Advocate.

For the respondent : Mr. Nand Lal Thakur, Addl. A.G.

**COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE**

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**Anoop Chitkara, Judge.**

The petitioner, after being arraigned as an accused in FIR No. 70 of 2020, under Sections 323 & 506 of IPC and Ss. 3(i)(s) and 3 (ii)(va) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, after now called 'SCST Act', dated 18-05-2020, registered in the file of Police Station Gohar, District Mandi, HP, came up under section 439 CrPC, without surrendering before this Court, and simultaneously obtained ad-interim bail.

2. While issuing notices to the State, the Court had requested Mr. Nand Lal Thakur, Additional Advocate General to have telephonic instructions in the matter from the concerned Police Station, and to procure status report immediately, either through WhatsApp/ e-mail and forward the same to this Court on e-mail id [highcourt-hp@nic.in](mailto:highcourt-hp@nic.in)

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<sup>1</sup> **Whether reporters of Local Papers may be allowed to see the judgment?**

and also send the scanned copy or PDF copy of the status report to the learned Counsel for the petitioner on his WhatsApp number.

3. Mr. Nand Lal Thakur, learned Additional Advocate General has filed the status report through e-mail, printout whereof has been placed on record. He further submits that he has sent a copy of the status report to Mr. Sanjeev Kumar Suri, Advocate, learned Counsel for the petitioner on his WhatsApp number.

4. I have read the status report(s) and heard counsel for the parties through video conference.

5. The petitioner did not file any power of attorney. To contain the spread of Novel Corona Virus, the Epidemiologists have advised to maintain social distancing in the entire world. Consequently, to avoid unnecessary congregation, this Court exempts the petitioner from filing the power of attorney.

6. The Petitioner did not file any petition before Special Judge/Sessions Court and has straightaway come up before this Court. However, that is inconsequential.

**PREVIOUS CRIMINAL HISTORY**

7. As per the counsel for the petitioner, the petitioner has no criminal history.

**SUBMISSIONS:**

8. The learned counsel for the bail petitioner submits that the case was lodged by the complainant to coverup their own act, conduct and a false, baseless and concocted case has been registered against her. The Ld. Counsel further contends that she is a permanent resident of the address mentioned in the memo of parties and there is no likelihood of her fleeing away and that she is ready to abide by all the conditions which may be imposed upon her.

9. Mr. Nand Lal Thakur, Ld. Additional Advocate General, states that in case this Court is inclined to grant bail, then it must be subject to stringent conditions.

10. In a petition filed under Section 439 CrPC, it is obligatory for the bail petitioner to be in custody or to surrender before the Court. However, due to the spread of Covid-19 disease, the State has stopped transport services and thus, it is not practically possible for the petitioner to travel up to Shimla. However, the Petitioner can surrender in a

nearby Court and her surrender in such Court shall be her deemed surrender before this Court for the purpose of this bail.

**11. Consequently, let the bail petitioner surrender herself before the Court of Ld. Judicial Magistrate, Gohar, District Mandi, during the course of the day, either in the Court complex or at the residence of the concerned Magistrate, as the concerned Judicial Magistrate may desire. Once she surrenders, the concerned Judicial Magistrate shall accept her personal bonds and release her on bail. It is clear that on her failure to surrender on or before 5 p.m. on 20-05-2020, this bail order shall expire, amount to automatic recalling of this order without any further action on the part of this Court, in view of S. 362 CrPC and the Judicial pronouncement of a larger bench of Hon'ble Supreme Court in New India Assurance v. Krishna Kumar Pandey, 2019 SCC Online SC 1786,**

**ANALYSIS AND REASONING:**

**12.** Pre-trial incarceration needs justification depending upon the heinous nature of the offence, terms of the sentence prescribed in the Statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, and doing away with victim(s) and/or witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

**13.** Section 3 (1) (s) of the Act reads as follows: -

*"abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view:"*

**14.** Section 18 and 18A of the Act bars the filing of application under Section 438 of the Code of Criminal Procedure and no anticipatory bail can be given to a person against whom allegations under the Act are leveled. For this reason, the petition is filed under Section 439 of the Code of Criminal Procedure.

**15.** I believe that the custodial interrogation of the petitioner is not going to serve any purpose.

**16.** 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."

17. 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.

18. 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.”

19. In *Vilas Pandurang Pawar v. State of Maharashtra*, 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.”

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

21. 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.”

**22.** 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.

**23.** 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.”

**24.** 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, I 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 !!”

25. The practice of accused surrendering before Sessions Court or High Court and thereby obtaining 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 bails after surrender. 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 or regular bails. 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.

26. Given the above reasoning, in my considered opinion, the judicial custody of the petitioner is not going to achieve any significant purpose. Thus, the Court is granting bail, subject to the following conditions, irrespective of the contents of the bail bonds, and the furnishing of personal bond shall be deemed acceptance of all stipulations, terms and conditions of this bail order:

(a) The petitioner shall furnish personal bond in the sum of Rs. 10,000/- and one surety in the like amount, to the satisfaction of the concerned Ilaqua Magistrate/Duty Magistrate. The petitioner be released without sending her to lockup, upon her furnishing personal bonds. The Petitioner shall also furnish one surety bond of the similar amount, on or before June 30, 2020, failing which this bail shall automatically stand cancelled and the petitioner shall surrender on Jul 1, 2020, before the Court accepting the bond, from where she is being released. The Court is dispensing with the requirement of furnishing surety bond at this stage to avoid travelling of persons to furnish the sureties, to abide by the lockdown ordered by the Government for the safety of the people, by maintaining social distancing to contain the spread of the Covid-19 disease.

(b) The bail bonds shall continue to remain in force throughout the trial and even after that in terms of Section 437-A of the CrPC. Before releasing the petitioner from custody, her AADHAR and other proofs of identity to secure presence during trial.

(c) The petitioner shall join investigation as and when called by the Investigating officer or any superior officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5 PM. The petitioner shall not be subjected to third-degree treatment, indecent language etc.

(d) The petitioner shall fully co-operate in the investigation and shall not hamper it, in any manner what so ever.

(e) The petitioner shall not influence, threaten, browbeat or pressurize the complainant, witnesses, and the Police official(s).

(f) The petitioner shall not make any inducement, threat, or promise, directly or indirectly, to the Investigating officer, or any other person acquainted with the facts of the case, to dissuade her from disclosing such facts to the Police, or the Court, or tamper with the evidence.

(g) The petitioner shall appear before the trial Court, on issuance of summons/warrants by such Court.

(h) There shall be a presumption of proper service to the petitioner about the date of hearing in the trial Court, even if such service takes place through phone/mobile/SMS/WhatsApp/E-Mail/Facebook or any other similar medium, by the trial Court, or by the Prosecution. In case the petitioner does not appear before the trial Court on such date of hearing, then the trial Court may issueailable warrants, and if the petitioner still fails to put in appearance, then the trial Court may issue Non-Bailable warrants to procure the presence of the petitioner, and send the petitioner to the Judicial custody for the period for which the trial Court may deem fit and proper, without being unduly harsh towards him.

(i) The petitioner shall attend the trial on each date, unless exempted.

(j) In case of Non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of CrPC. The failure of the petitioner to reimburse the State shall entitle the trial Court to order transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be only to trace the petitioner and relates to the exercise undertaken solely to nab the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

(k) The petitioner shall abstain from all criminal activities, if he does so, then in the fresh FIR, the Court shall take into account that even earlier the Court had cautioned the accused not to repeat the offence.

(l) During the pendency of the trial, if the petitioner commits any offence under SCST Act, then this bail shall be liable to be cancelled and the State shall move appropriate application for its cancellation.

(m) The petitioner shall surrender all firearms along with ammunitions, if any, and the arms license to the concerned authority within 60 days from today.

(n) The petitioner shall inform the SHO about the place of residence during trial. The petitioner shall intimate about the change of residential address, and phone numbers, within two weeks from such change, to the police station, and after filing of the Police report also to the trial Court.

(o) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the petitioner, and even the trial Court shall be competent to cancel the bail.

**27.** In case the petitioner finds the bail condition(s) as violating fundamental or other rights, including any human rights, or faces any other difficulty due to any condition, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, before the Court taking cognizance or the trial Court, as the case may be.

**28.** The Counsel representing the accused and the Judicial officer accepting the bail bonds, shall explain all conditions of this bail order to the petitioner, in vernacular.

**29.** The petitioner undertakes to comply with all directions given in this order, and the furnishing of bail bonds by the petitioner is acceptance of all such conditions.

**30.** Consequently, the petitioner shall be released on bail during the course of the day, in the present case, in connection with the FIR mentioned above, on her furnishing personal bond in the aforesaid terms.

**31.** The Court attesting the personal bonds shall ascertain the identity of the bail-petitioner, her family members, through AADHAR Card. The petitioner shall give details of AADHAR Card, phone number(s), WhatsApp number, e-mail, Facebook account, etc., Pan Card and Passport if available, on the reverse page of the personal bonds. The petitioner shall also furnish details of personal bank account(s).

**32.** This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation.

33. The present bail order is only for the FIR mentioned above. It shall not be a blanket order of bail in all other cases, if any, registered against the petitioner.

34. The SHO/Additional SHO of the concerned Police Station or the Investigating Officer shall send a copy of this order, preferably a soft copy, to the complainant.

35. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

36. The Court Master shall handover this order to the concerned branch of the Registry of this Court, and the said official shall immediately send a copy of this order to the Judicial Magistrate, Gohar, District Mandi, Himachal Pradesh, by e-mail. The Court attesting the personal bonds shall not insist upon the certified copy of this order, and shall download the same from the website of this Court, which shall be sufficient for the purposes of the record.

37. The Court Master shall handover an authenticated copy of this order to the Counsel for the Petitioner, and to the Learned Advocate General, if they ask for the same.

38. The petition stands allowed in the terms mentioned above.

**(Anoop Chitkara),  
Judge.**

May 20, 2020 (ks)