

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.141 of 2021

Date of Decision: January 27, 2021.

Parveen Kumar

...Petitioner.

Versus

State of H.P.

...Respondent.

Coram:

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

Whether approved for reporting?¹ NO

For the petitioner: Mr. B.B. Vaid and Mr. Rakesh Sharma, Advocates.

For the respondent: Ms. Seema Sharma, Dy. A.G., Mr. Manoj Bagga and Mr. Shreyak Sharda, Asstt. A.Gs., for the State.

FIR No.	Dated	Police Station	Sections
194 of 2020	18.12.2020	Palampur, District Kangra, Himachal Pradesh.	Section 3(1) of the SC&ST and Sections 504, 506 and 34 of IPC.

Anoop Chitkara, Judge (oral).

The petitioner, on being arraigned as accused of commission of offences punishable under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3(1) of the said Act, being cognizable and non-bailable offences, has come up under section 439 of the Code of Criminal Procedure, 1973, seeking permission to surrender before this Court, and simultaneously seeking release on ad-interim bail.

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

2. A perusal of the petition reveals that the petitioner straightaway filed the bail petition before High Court, which is permissible given the decision of a three Judges Bench of HP High Court, in **Mohan Lal v Prem Chand**, AIR 1980 HP 36, (Para 9 & 15), wherein the Full bench holds that a person can directly apply for an anticipatory bail or regular bail to the High Court without first invoking the jurisdiction of the Sessions Judge.

3. The bail petition is silent about criminal history, however, learned counsel for the bail petitioner states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. Status report stands filed and taken on record and the same also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are using derogatory words prohibited under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The contents of FIR/status report reveal that the petitioner stands arraigned as an accused for the commission of Non-bailable offences.

6. In **Ami Chand v. State of H.P.**, CrMPM 1116 of 2020, Para 65, this Court held that in the absence of any riders or restrictions under S. 439 CrPC, any person accused of a non-bailable offence, under any penal law, including the violations under the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989, can apply under section 439 CrPC, offering to surrender and simultaneously seeking interim bail. On receipt of such application, the Court is to satisfy that the applicant stands arraigned as an accused in a FIR disclosing Non-Bailable offences. If all these parameters are complete, then the Courts are under an obligation to accept surrender.

Since custody is a sine qua non for considering a bail application, the Court is under an obligation to consider the prayer for interim bail after this deemed custody. All such pleas fall under the scope of S. 439 CrPC itself, and there is no need to invoke S. 482 CrPC. After that, granting or refusing interim bail is a Judicial function.

7. The accused/petitioner is present in Court and has offered to surrender, which is accepted, and thus, is in deemed custody of the Court.

8. The Counsel for the petitioner contends that the complainant made false and exaggerated allegations invoking SCSTPOA, with a view to deprive the opportunity of S. 438 CrPC.

9. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

10. **Reasoning:** Keeping in view the nature of allegations and the sentence prescribed therein, the petitioner has made out a case for bail.

11. In the present case, the maximum sentence imposable for the offences mentioned in FIR attracts the application of the directions passed in **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273, (Para 13), wherein Hon'ble Supreme Court directed all the State Governments to instruct its police officers not to arrest automatically when the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

12. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the

evidence produced, the Courts can impose restrictive conditions.

13. Given the above reasoning, coupled with the peculiar facts and circumstances of the case, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

14. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR 25,000/-), to the satisfaction of the Registrar (Judicial)/ Additional Registrar (Judicial) of this Court, or any such Officer as may be authorised in this behalf by any of the Registrars of this Court. Given the conduct of the petitioner to offer surrender before this Court, shows that such an accused did not try to abscond, hence there is no need for surety bonds.

15. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

a) Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

b) The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

c) The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

d) The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

e) In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of summons,ailable and non-ailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020]:

- i.** At the first instance, the Court shall issue the summons.
- ii.** In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issueailable warrants.
- iii.** Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Aailable Warrants to procure the petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

16. During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

17. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

18. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any

situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

19. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.
20. 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.
21. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
22. *There would be no need for a certified copy of this order, and any Advocate for the Petitioner can download this order from the official web page of this Court and attest it to be a true copy.*

The petition stands allowed in the terms mentioned above.

**Anoop Chitkara,
Vacation Judge.**

January 27, 2021 (ks).