

SC ID no. 156/2019
IA No.09/2020
State Vs.Soran Singh
FIR No.573/2018
P.S. Harsh Vihar
U/s. 498-A/304-B/34 IPC

15.09.2020

Present : Sh. Rakesh Mehta, Ld. Addl. PP for the State
(through Video Conferencing).

Ms. Ifat Sultana, Ld. Counsel for applicant/accused
(through Video Conferencing).

IO/SI Rajiv Kumar has also joined video
conferencing. Reply is filed.

This is 2nd application for grant of bail u/s. 439 Cr.P.C
as filed on behalf of above named applicant/accused during
Covid-19 Pandemic.

Arguments have been heard through video
conferencing using 'Cisco WebEx' App.

Ld. Counsel for applicant/accused argued that
applicant is on interim bail till 31.10.2020 due to Covid-19
Pandemic and has been falsely implicated in the present case.
Ld. Counsel for applicant vehemently contended that while
applicant is on interim bail/short term bail, he is to be considered

in the custody of court and therefore, present application for grant of regular bail u/s. 439 Cr.P.C is maintainable. My attention is drawn in respect of authorities reported as K.L.Verma Vs. State & Ors., (1998) 9 SCC 348, C.H.Siva Prasad & Ors. Vs. State of A.P, 1998 (5) ALD 729, Vijay Singh Vs. Govt. of NCT of Delhi, bail application nos. 26 & 28/2017, Nirmal Jeet Kaur Vs. State of M.P, Appeal (Crl.) 978 of 2004, Sh. Inderjeet Rai Vs. Republic of India, 1997 II OLR 499 and A.K.Murmu Vs. Prasanjeet Chaudhary & Ors., 1999 Crl. L.J 3460.

Per contra, Ld. Addl. PP for the State argued that present application for grant of bail u/s. 439 Cr.P.C is not maintainable as applicant is already on interim bail. It has been submitted that an application for grant of bail u/s. 439 Cr.P.C can be filed only when applicant is in custody and not otherwise. Ld. Addl. PP further argued that authorities as relied upon by Ld. Counsel for applicant are not applicable in the facts and circumstances of the present case as in those cases either applicant was on anticipatory bail and he was granted time to move an application before the Sessions Court or during pending regular bail application applicant was granted interim bail.

Admittedly, applicant is on interim bail till 31.10.2020. The short question to decide is whether present application u/s.

439 Cr.P.C is maintainable when applicant is on interim bail till 31.10.2020. **Hon'ble Supreme Court in Nirmal Jeet Kaur Vs. State of M.P** (Surpa) held as under and I quote:-

“For making an application under Section 439 the fundamental requirement is that the accused should be in custody. As observed in Salauddin's case (supra) the protection in terms of Section 438 is for a limited duration during which the regular Court has to be moved for bail. Obviously, such bail is bail in terms of Section 439 of the Code, mandating the applicant to be in custody. Otherwise, the distinction between orders u/s. 438 & 439 Cr.P.C shall be rendered meaningless and redundant.”

Within the meaning of section 439 Cr.P.C, a person is in custody when he is in duress either because he is held by the investigating agency or by the police 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. **Hon'ble Delhi High Court in Vijay Singh Vs. State, bail application nos. 26 & 28** (supra) in para no.11 held as under and I quote:-

“In view of the above discussion and in view of the law laid down in the case of Sunita Devi (supra) and D.K.Ganesh Babu (supra), this court is of the considered opinion

that the application for the grant of bail u/s. 439 Cr.P.C can be moved by an accused only in case while he is 'in custody' and none else."

As applicant is on interim bail till 31.10.2020, he cannot be considered in the custody of court till he surrenders or offers himself to the Court's jurisdiction. The authorities as relied upon by Ld. Counsel for applicant are not helpful in the facts and circumstances of the present case. Accordingly, second application for bail u/s. 439 Cr.P.C as filed on behalf of above named applicant stands dismissed being not maintainable.

(Sanjeev Kumar Malhotra)
ASJ-04/Shahdara
KKD Courts/Delhi/15.09.2020