

(2022) 02 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 37 Of 2022

Amar @ Rounie S/O Sharvan

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 363, 366A, 376

Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2022) 02 SHI CK 0001

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Pravesh Negi, Shiv Pal Manhans, Raju, Ram Rahi

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case

FIR No. 91 of 2021, dated 04.08.2021, under Sections 363, 366A, 376 IPC and Section 6 of POCSO Act, registered at Police Station Reckong Peo,

District Kinnaur, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to

tamper with the prosecution evidence nor in a position to flee from justice, as he is permanent resident of the place. No fruitful purpose will be served

by keeping him behind the bars for an unlimited period, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 04.08.2021 ChowkidarÂcumÂStorekeeper of Balika Aashram, Kalpa, telephonically

informed the local police that a girl (name withheld), who is a student of 12th class and resident of the Aashram, is missing and it is apprehended that someone might have enticed her and took her away. Upon the complaint, so made by the complainant, police machinery was set into motion, resultantly, police laid nakkas in the entire district. On the day of incident, at about 05:30 p.m., police found the aforesaid girl (prosecutrix herein) with a person named Amar (petitioner herein). The prosecutrix stated that in the year 2019 the petitioner married her elder sister and the petitioner took the prosecutrix to Solan. The prosecutrix further stated that during the month of November, 2020, she availed leave due to covid pandemic and went to Solan, to look after her sister and her infant. The prosecutrix resided with her sister and her husband (petitioner herein) at Solan till 18.02.2021 and in the interregnum, the petitioner, during the month of February, 2021, committed sexual intercourse with her. On 19.02.2021 the petitioner dropped the prosecutrix at Balika Aashram, Kalpa. When the prosecutrix missed her menses, she narrated the entire story to her sister, who, in turn made a conference call to the petitioner. In aftermath, the petitioner came to Kalpa on 04.08.2021 and at about 02:30 p.m. met the prosecutrix near a temple. Thereafter, both of them boarded a bus en route Solan, however, police intercepted them. Upon the complaint, so made by the complainant, police registered a case under the apt Sections and the investigation ensued. The prosecutrix was medically examined and she was found pregnant. On 05.08.2021, the petitioner was arrested and medically examined. During the course of investigation, the petitioner divulged that he is an orphan and has studied upto 12th class in a Baal Aashram. The police upon the identification of the petitioner prepared the spot maps, procured the date of birth records of the prosecutrix. As per the DNA report, the DNA of the infant born to the prosecutrix completely matches with the DNA of the petitioner. As per the police, upon completion of the investigation, challan was presented in the learned Trial Court on 15.09.2021. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner has committed a heinous offence and he is a nomadic, so in case, at this stage, if he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. It is prayed that at this stage, the bail application of the petitioner be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, as investigation is complete, even challan stands presented in the learned Trial Court, so the custody of the petitioner is not at all required by the police for any purpose. Therefore, the petition may be allowed and the petitioner may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner has committed a serious offence and he is nomadic, so in case, if he is enlarged on bail, he may flee from justice and may tamper with the prosecution evidence. It is prayed that the bail application of the petitioner be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is neither in a position to flee from justice nor in a position to tamper with the prosecution evidence. Investigation is complete and even challan stands presented in the learned Trial Court, so the custody of the petitioner is not at all required by the police for any purpose. It has been argued that the petitioner is behind the bars for the last about six months and he cannot be kept behind the bars for an unlimited period, so the petitioner may be enlarged on bail by allowing the instant bail petition.

7. At this stage, considering the age of the petitioner, who is only 22 years old and that of the prosecutrix, the manner in which the offence is alleged to have been committed by the petitioner, the fact that the petitioner is an orphan, he is neither in a position to tamper with the prosecution evidence, nor in a position to flee from justice, the investigation is complete, even challan stands presented in the learned Trial Court, so the custody of the petitioner is not at all required by the police for any purpose, nothing remains to be recovered either from the petitioner or at his instance, also considering the facts that the petitioner is behind the bars for the last about six months and he cannot be kept behind the bars for an unlimited period, the petitioner is ready and willing to abide by the terms and conditions of bail, in

case he is enlarged on bail and also considering the overall facts, which have come on record, and without elaborately discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail, is required to be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, in case FIR No. 91 of 2021, dated 04.08.2021, under Sections 363, 366A, 376 IPC and Section 6 of POCSO Act, registered at Police Station Reckong Peo, District Kinnaur, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of Rs.50,000/Â (rupees fifty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/ Police/ authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Investigating Officer or Court.

8. In view of the above, the petition is disposed of.

9. Needless to say that the observations made hereinabove are only confined for adjudication of the present case and the same shall have no bearing on the merits of the main case, which shall be adjudicated on its own.

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