

(2017) 10 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : 1306 and 1308 of 2017

Ankush Negi, & Anr.

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 23-10-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#) - Special powers of High Court or Court of Session regarding bail
[Indian Penal Code, 1860](#), [Section 120B](#), [Section 376](#), [Section 34](#), [Section 342](#), [Section 506](#) - Punishment of criminal conspiracy - Punishment for rape - Acts done by several persons in furtherance of common intention - Punishment for wrongful confinement - Punishment for criminal intimidation
[Protection Of Children From Sexual Offences Act, 2012](#), [Section 4](#)

Citation : (2017) 10 SHI CK 0004

Hon'ble Judges : Sandeep Sharma

Bench : Single Bench

Advocate : Manoj Thakur, M.L. Chauhan

Judgement

1. Both the bail petitions, arise out of same FIR, as such, are being taken up together for disposal.
2. By way of instant bail petitions filed under Section 439 CrPC, prayer has been made on behalf of the bail petitioners, for grant of regular bail in FIR No. 12/16 dated 21.2.2016 under Sections 342, 376, 120B, 506 and 34 IPC and Section 4 of Protection of Children from Sexual Offences Act, registered at Police Station, Sangrah, District Sirmaur, Himachal Pradesh.
3. Sequel to order dated 16.10.2017, ASI Prakash Chand has come present with the record. Mr. M.L. Chauhan, learned Additional Advocate General has also placed on record status report, prepared on the basis of investigation carried out by the investigating agency till date. Record perused and returned.

4. Mr. Manoj Pathak, learned counsel representing the petitioners, while inviting attention of this court, to order dated 10.10.2017, passed in CrMP(M) No. 1215 of 2017 titled as Kamal versus State of Himachal Pradesh (available at page-6 of the paper-book) contended that other co-accused stands released on bail. Record reveals that aforesaid FIR came to be registered against the bail petitioners as well as co-accused Kamal, at the behest of complainant/prosecutrix, who alleged that on 16.2.2016, Kamal (co-accused) stopped her from going home on the pretext that he will marry her, whereafter, she was made to stay in the house of one Laik Ram, resident of Majholi, who happened to be friend of co-accused Kamal. As per complainant, bail petitioners as well as co-accused Kamal sexually assaulted her twice on 17.2.2016 and thereafter again on 18.2.2016. On 19.2.2016, she was dropped by the accused on Renuka road. On the basis of aforesaid complaint, FIR came to be registered against the accused persons including the bail petitioners. Since 21.2.2016, bail petitioners are in custody, whereas, other accused namely Kamal was released on bail by this Court on 10.10.2017.

5. Perusal of order dated 10.10.2017, suggests that this Court had an occasion to go through the statements/depositions made by the prosecution witnesses during trial, wherein, admittedly, all the material prosecution witnesses including complainant/prosecutrix have turned hostile. Even today, during proceedings of the case before this Court, Mr. Manoj Pathak, learned counsel representing the bail petitioners made available copies of statements/depositions made by all the material prosecution witnesses, including complainant/prosecutrix, which clearly suggest that none of the prosecution witnesses have supported the case of the prosecution, as such, bail petitioners are also entitled to be released on bail like other co-accused namely Kamal.

6. Mr. M.L. Chauhan, learned Additional Advocate General, after having gone through order dated 10.10.2017, passed in CrMP(M) No. 1215 of 2017, as well as statements of prosecution witnesses including complainant recorded before the Court below fairly conceded that the prosecutrix has resiled from her statement. Learned Additional Advocate General has also acknowledged the correctness and genuineness of the aforesaid statements/depositions produced before the court, which are taken on record.

7. This Court, after having carefully perused the status report, as well as statements/ depositions made by the prosecution witnesses before the Court below, specifically the prosecutrix/complainant, sees no reason to keep the bail petitioners in custody, for indefinite period, who have already remained in judicial custody for more than 12 months now.

8. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise also, normal rule is of bail and not jail. Apart from above, Court has to keep in mind nature of accusations, nature of evidence

in support thereof, severity of the punishment, which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime. Petitioners are local residents of addresses given in memo of parties and shall remain available to face the trial and to undergo imprisonment, if any, which may be imposed on conclusion of the trial.

9. The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

10. In view of above, both the petitions are allowed and the petitioners are ordered to be enlarged on bail in the aforementioned FIR, subject to their furnishing personal bonds in the sum of Rs.25,000/- each with one surety in the like amount to the satisfaction of learned Chief Judicial Magistrate, concerned with following conditions:

- (a) They shall make themselves available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;
- (b) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
- (c) They shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and
- (d) They shall not leave the territory of India without the prior permission of the Court.

11. It is clarified that if the petitioners misuse the liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this Court for cancellation of the bail.

12. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of these petitions alone. The petitions stand accordingly disposed of.

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