

(2023) 12 SHI CK 0014

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2748 Of 2023

Asif Saifi @ Bablu

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 07-12-2023

Acts Referred:

Indian Penal Code, 1860 — Section 354A, 452, 509
Protection Of Children From Sexual Offences Act, 2012 — Section 8, 12
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2023) 12 SHI CK 0014

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Akshay Katoch, Avni Kochhar

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The petitioner has filed the present petition for seeking regular bail. It has been asserted that the police of Women Police Station, Solan falsely implicated the petitioner in FIR No. 27 of 2023, dated 24.7.2023, registered for the commission of offences punishable under Sections 452, 354-A and 509 of IPC and Sections 8 and 12 of the Protection of Children from Sexual Offences (POCSO) Act. The petitioner was arrested on 27.4.2023. The petitioner is innocent and he has nothing to do with the commission of the offences. There is no evidence against the petitioner to connect him with the commission of crime. The police have completed the investigation and no recovery is to be effected from the petitioner. The petitioner shall not tamper with the prosecution evidence and will abide by the terms and conditions, which may be imposed by the Court. No useful purpose would be served by detaining the petitioner in custody; hence, the petition.

2. Petition was opposed by filing a status report asserting that the mother of the victim made a complaint to the police that she was informed by Gopal Dass on

24.7.2023 that the petitioner had entered the room of the victim and sexually assaulted her. The victim's mother reached the house and the victim told her that one boy came to the house by pretending to be an electrician. He sexually assaulted the victim and touched her inappropriately. Gopal Dass apprehended that person. The petitioner was present on the spot. The police recorded the FIR and arrested the petitioner. The statement of the victim was recorded under Section 164 of Cr.P.C. The police also seized the motorcycle and mobile phone of the petitioner. The petitioner had also taken the photographs during the incident and the mobile phone was sent to SFSL for analysis. As per the analysis, the images captured on 24.7.2023 between 2.00 PM to 4.00 PM were found in the mobile phone and no data was found in the SIM. The police prepared the challan and presented it before the Court.

3. I have heard Mr. Akshay Katoch, learned Counsel for the petitioner and Mr. Avni Kochhar, learned Deputy Advocate General for the respondent-State.

4. Mr. Akshay Katoch, learned Counsel for the petitioner submitted that the petitioner is innocent and he was falsely implicated. No data pertaining to the case was found in the mobile phone seized by the police; therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

5. Ms. Avni Kochhar, learned Deputy Advocate General submitted that the petitioner was present on the spot after the incident. The victim has supported her version in her statement recorded under Section 164 of Cr.P.C. The images were found in the mobile phone as per the report of the analysis. Therefore, she prayed that the present petition be dismissed.

6. I have given considerable thought to the rival submissions at the bar and have gone through the record carefully.

7. The Hon'ble Supreme Court discussed the parameters for granting the bail in *Bhagwan Singh v. Dilip Kumar*, 2023 SCC OnLine SC 1059 as under:-

12. The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependent upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for a grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entail a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of

the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.

13. We may also profitably refer to a decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav* (2004) 7 SCC 528 where the parameters to be taken into consideration for the grant of bail by the Courts have been explained in the following words:

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598: 2002 SCC (Cri) 688] and *Puran v. Rambilas* [(2001) 6 SCC 338: 2001 SCC (Cri) 1124].)"

8. A similar view was taken in *State of Haryana vs Dharamraj* 2023 SCC Online 1085, wherein it was observed:

7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide the grant of bail in *Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598 and *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528. In *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496, the relevant principles were restated thus:

'9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application

for bail are:

- (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.'

9. The status report specifically mentions that the petitioner was found on the spot when the victim's mother arrived at the spot. The police also recovered the mobile phone of the petitioner and as per the report of analysis; the images captured between 2.00 PM to 4.00 PM on 24.7.2023 were found in the mobile phone. The victim has also supported the prosecution version in her statement recorded under Section 164 of Cr.P.C. before the learned Magistrate. Therefore, prima facie, there is sufficient material on record to connect the petitioner with the commission of the crime and the plea that there is nothing on record to connect him with the commission of the crime is not acceptable.

10. The petitioner gained access to the house of the victim by pretending to be an electrician, who had visited the house to repair the electricity. He took advantage of the fact that the victim was alone in her house. This is a serious act and affects not only the individual but the society as a whole because the people would not feel safe even in their home which is supposed to be their castle. Therefore, the manner of the commission of the act will disentitle the petitioner from the concession of the bail.

11. Hence, the present petition fails and the same is dismissed.

12. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.