

(2020) 05 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 576 Of 2020

Baldev Singh

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 19-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 120B, 363, 366, 376
Protection Of Children from Sexual Offences Act, 2012 — Section 4

Citation : (2020) 05 SHI CK 0035

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Ritesh Bhardwaj, Sumesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition filed under Section 439 of the Code of Criminal Procedure, the petitioner has prayed for grant of bail in FIR No. 14/2018, dated 17.02.2018, registered under Sections 363, 366, 376 & 120-B of the Indian Penal Code & Section 4 of the POCSO Act at Police Station Gohar, District Mandi, H.P.

2. The case of the prosecution is that above FIR stands registered on 17.02.2018 at the behest of father of the victim alleging therein that the victim was taken away from the lawful custody of the father of the victim by the present petitioner and thereafter her modesty has been outraged by the petitioner on the pretext of marriage.

3. Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the case and he is not guilty of the offences as have been alleged against him. He further states that out of the five accused who have been named in the FIR, four are already out on bail. He further argued that the challan

in the matter stands filed by the police, the petitioner is in custody since 24.09.2019 and no fruitful purpose will be served by keeping him in judicial custody, as no recovery etc. is to be effected from him. On this count, he submits that the petition be allowed and the petitioner be released on bail.

4. At this stage, learned counsel for the petitioner states that though it is averred in the petition that the petitioner has not filed any other petition for grant of bail except the present petition before this Court, but earlier the petitioner had approached the Court of competent jurisdiction for grant of bail, which petition stood rejected and inadvertently, this fact could not be mentioned in the petition. He states that this is a bonafide mistake which has been so committed and the intention was not to mislead the Court. The submission so made by learned counsel for the petitioner is taken on record.

5. Opposing the bail petition, learned Additional Advocate General has argued that as the offences alleged against the petitioner are grave as he has been booked inter alia under the POCSO Act, therefore, it will be deterrent to the trial in case the petitioner is ordered to be released on bail. He further argued that the age of victim is stated to be 17 years 1 month and 2 days and as it is clearly borne out from the record that the victim was taken away from the lawful custody of her guardian and has been subjected to sexual molestation, therefore, in these circumstances, the petitioner does not deserves to be released on bail. He has also argued that even after lodging of the FIR, the petitioner was evading arrest. He was arrested after a long time and there is every possibility that in the event of his being released on bail, he shall evade the trial and also try to win over the witnesses.

6. I have heard learned counsel for the parties and have also gone through the status report as well as other documents appended with the petition.

7. The FIR which stands registered against the petitioner is dated 17.02.2018. It is borne out from the record that the petitioner was arrested on 23.09.2019, i.e., after a lapse of more than one year as from the date of lodging of the FIR. However, as it is the own case of the prosecution that the petitioner was arrested from Mandi itself on the basis of an information which was so received from an informer, this Court finds it difficult to believe the story of the prosecution that the petitioner was evading arrest, as it is not the case of the State that the petitioner was arrested either outside the State of Himachal Pradesh or outside the District in which the FIR was registered.

8. Be that as it may, it is a matter of record that as from 24.09.2019, the petitioner is in custody and as of now, he is in judicial custody. Challan already stands filed and no recovery etc. is to be effected from the petitioner. Age of the victim is stated to be more than 17 years and as per RFSL report, there was nothing suggestive of recent sexual intercourse, which is borne out from the status report itself. In this background, in my considered view, no fruitful purpose will be served by retaining the petitioner in custody. Whether or not the

petitioner is guilty of the offences alleged against him, is a matter of trial and in case he is found guilty of the offences alleged against him, then, but obvious, the consequences will ensue, but on that count, it may not be prudent to deny bail to the petitioner at this stage, taking into consideration the totality of the factual matrix involved in the case. As far as the apprehension expressed by the learned Additional Advocate General is concerned, the same can be taken care of by imposing stringent conditions upon the petitioner. One more fact which is weighing with this Court while allowing the present petition is that out of five accused, four already stands enlarged on bail, some of whom were granted anticipatory bail itself.

9. Accordingly, this petition is allowed and the petitioner is ordered to be released on bail in FIR No. 14/2018, dated 17.02.2018, registered under Sections 363,366, 376 & 120-B of the Indian Penal Code & Section 4 of the POCSO Act at Police Station Gohar, District Mandi, H.P., subject to his furnishing bail bonds in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of learned Chief Judicial Magistrate, Mandi, H.P. The petitioner shall also abide by the following conditions:

"(a) He shall 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) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not 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 Court or the Police Officer; and

(d) He shall not leave the territory of India without prior permission of the Court."

10. It is clarified that the findings which have been returned by this Court while deciding this petition are only for the purpose of adjudication of the present bail application and learned Trial Court shall not be influenced by any of the findings so returned by this Court in the adjudication of this petition during trial of the case. It is further clarified that in case the petitioner does not comply with the conditions which been imposed upon him while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of bail. The petition stands disposed in above terms.