

(2020) 07 SHI CK 0371

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 784 Of 2020

Daya Nand Sharma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 376, 506

Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2020) 07 SHI CK 0371

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Ajay Kochhar, Abhinav Mehta, S.C. Sharma, P.K. Bhatti

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The present bail application under Section 439 of the Code of Criminal Procedure has been maintained by the petitioner for releasing him on bail in case FIR No. 23/2020, dated 09.04.2020, under Sections 376 and 506 of the Indian Penal Code (for short "IPC") and Section 4 of Protection of Children from Sexual Offences (for short "POCSO") Act, registered at Police Station Chopal, District Shimla, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. Further, he is permanent resident of Himachal Pradesh and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice and 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 08.04.2020, the daughter of the complainant, who is minor, told her that in the month of January,

2020, when she was residing at village Thalog in the residence of the accused and on 02.01.2020, when accused was alone in his house, he came to the room of prosecutrix, bolted the door from inside and raped her. The accused after committing rape also threatened the prosecutrix with dire consequences. The prosecutrix also told the complainant that since then she also missed her menstrual cycle. On the basis of the complaint, so filed by the complainant, FIR No. 23/2020, dated 09.04.2020, under Sections 376 and 506 IPC and Section 4 of POCSO Act, came to be registered against the petitioner.

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

5. The learned Counsel for the petitioner has argued that taking into consideration the date of birth certificate of the prosecutrix collected by the police and Radiological age of the prosecutrix, there is no certainty that she was minor at the time of offence and even otherwise also, though the story of the prosecution is yet to be proved in the trial, the petitioner cannot be adjudged convict at this moment and thus, he may be released on bail. He has further argued that the petitioner will join the investigation as and when he would be asked to do so and will not flee from justice, since he is permanent resident of Himachal Pradesh. On the other hand, the learned Additional Advocate General has argued that the petitioner was found involved in a heinous offence and taking into consideration the gravity of the offence, in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. He has prayed that the bail application of the petitioner be dismissed.

6. At this stage, taking into consideration the fact that the petitioner is permanent resident of District Shimla and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the petitioner is ready and willing to abide by the conditions of bail, if so granted, the other circumstances as depicted in the police report, considering the overall facts, which have come on record, and without discussing the same at this stage and also the fact that the petitioner cannot be kept behind the bars for an unlimited period, 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, who has been arrested by the police, in case FIR No. 23/2020, dated 09.04.2020, under Sections 376 and 506 IPC and Section 4 of POCSO Act, registered at Police Station Chopal, District Shimla, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of Rs. 20,000/- (rupees twenty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court/Chief Judicial Magistrate, Shimla. 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.

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

Copy dasti.