

(2022) 05 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2442 Of 2021

Gaurav Verma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439

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

Protection Of Children From Sexual Offences Act, 2012 — Section 4, 6

Citation : (2022) 05 SHI CK 0018

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rajesh Kumar Parmar, Hemant Vaid

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court seeking bail under Section 439 Code of Criminal Procedure (in short 'Cr.P.C.'), in case FIR No.206 of 2021, dated 06.06.2021, registered in Police Station Sadar, Una, H.P., under Sections 363, 366A and 376 of the Indian Penal Code (in short 'IPC') and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' in short).

2. Status report stands filed, wherein it is stated that father of victim had approached the police in Police Chowki Mehatpur on 06.06.2021 with a complaint, which was entered as Daily Diary Report No.25, dated 06.06.2021, stating therein that his daughter, aged about 17 years, had eloped from the house on 05.06.2021 without informing anybody and despite making all efforts, she was not traceable. Further that mother of victim had disclosed to her father (complainant) that their daughter (victim) was having relations with Gaurav, nephew of Sudesh Kumari wife of Sarwan Singh and because of those relations their daughter was pregnant and about 2-3 months ago Sudesh Kumari had

managed abortion of victim girl at Mehatpur.

3. As per complaint, second episode which came in the notice of father was that Santosh Devi (sister-in-law of complainant), who is wife of Sonu, resident of Nangal (Punjab), had also allured his (complainant's) daughter and had introduced her with some boy. Therefore, complainant has suspected that Sudesh Kumari and Santosh Devi were behind eloping of their minor daughter.

4. It has further been stated in the status report that girl was brought to the Police Station by complainant himself on 07.06.2020 at about 12.10 a.m. alongwith her date of birth certificate and photograph. From the certificate, date of birth of victim was revealed as 13.12.2004 and she was found to be of the age of below 18 years. As per status report, at that time, victim had made a statement to the police that she was taken by one Gaurav on motorcycle, an Rickshaw driver at Nangal. On the basis of statement of victim, Gaurav Kumar (petitioner) son of Ram Pal was arrested.

5. It is also stated in the status report that victim was taken for Medicolegal Examination on 07.06.2021, but she, in presence of her mother Sushma Rani, had refused, in writing, to undergo medical checkup. However, on 08.06.2021, she, alleging violation of her person by accused Gaurav (petitioner), expressed desire to undergo medical checkup. Whereupon, Section 376 IPC read with Section 4 of POCSO Act was also added with Sections 363 and 366A of IPC and victim was medically examined.

6. As per status report, on 10.06.2021, statement of victim was recorded under Section 164 Cr.P.C., before learned Additional Chief Judicial Magistrate, Una, wherein she had stated that another Gaurav, nephew of Sudesh Kumari, had been visiting house of his maternal grandmother and his maternal Aunt Sudesh Kumari (Mami) used to take victim to her house for domestic help and during that time the said Gaurav, after finding opportunity, had violated her 3-4 times and it was also in the knowledge of his maternal Aunt Sudesh Kumari, but Sudesh Kumari had asked her (victim) not to disclose it to anyone by creating fear that on knowing it her (victim's) father would kill the victim and, therefore, out of fear she did not disclose it to anybody at home. Further that after knowing her pregnancy, she was taken to 'Indu Nursing Home' Mehatpur by Sudesh Kumari and her pregnancy was aborted.

7. It has been further stated by the victim in her statement recorded under Section 164 Cr.P.C. that in January her maternal grandmother took the victim alongwith her to her home and introduced victim with a boy, namely, Gaurav (present petitioner). Thereafter they (petitioner and victim) met at Mandi and at that time her maternal grandmother was with her. Thereafter for five months they did not meet, however, continued to be in touch through conversation on mobile. On 5th January at about 1:00 P.M. they met in NSC Park and thereafter they went on bike to house of petitioner and stayed there during night, where they copulated. Thereafter at 4:00 P.M. petitioner took her to Shivalik Colony and

11:00 P.M. left her in Mehatpur Bazar, where Police was on patrolling and she contacted her father on mobile through Police, whereupon her father came there and brought her back to home.

8. Learned Additional Advocate General has submitted that petitioner has violated a minor girl and thereafter left her during night in Mehatpur Bazar and thus has committed a heinous crime, as such he is not entitled for bail.

9. Learned counsel for the petitioner has submitted that even if case of the prosecution is admitted to be true and correct for argument sake without admitting it to be true otherwise, then also, it is evident that petitioner was not knowing about minority of victim and he is suffering for no fault on his part, despite the fact that victim was introduced to him by maternal grandmother of victim and allowed to accompany the petitioner who herself had come to him. Learned counsel for the petitioner has submitted that as is evident from the report/complaint filed by father of victim, first alleged episode wherein victim had become pregnant is not related to present petitioner, whereas for second incident petitioner has been implicated in present case. He has submitted that as per complainant, father of victim, main culprits is his sister-in-law (wife of his brother in law i.e. Sala Sonu) who had allured and enticed victim and introduced with some boy as it was she who was behind the eloping the victim. Further that from the averments made in the complaint, it is evident that family members of victim, particularly mother of victim was well aware about the activities of victim and her bhabi Santosh Devi (wife of Sonu). He has further stated that on 7.6.2021 victim was brought by her father to the Police Chowki and thereafter she was taken to hospital for medical examination, but she refused to undergo medical checkup and at that time she was accompanied by her mother Sushma Rani, which indicates that family members and relatives of victim were also involved in the entire episode, however, lateron, tutoring and manipulation of the facts and circumstances, victim was again made to agree to undergo medical examination on next day, i.e. 8.2.2021. It has been submitted that from the statement of victim, it is apparent that her maternal grandmother introduced the petitioner with victim and petitioner and victim had met each other with the knowledge, consent and in presence of maternal grandmother of victim. Thereafter victim met the petitioner in the park and accompanied him on his bike and stayed at the house of petitioner. He has submitted that family and relative of victim were knowing the petitioner and from the statement of victim, it is apparent that victim accompanied the petitioner on her own volition and will and at that time it was neither in the knowledge nor disclosed by the victim that she was minor. It appears that after lodging case by father of victim, she was left by the petitioner in front of Police Officials on patrolling in Mehatpur Bazar, thus it is not a case of abandoning victim alone, but it is a case where victim was facilitated by the petitioner to go back.

10. He has further submitted that despite specific averments and complaint by father as well as victim, Santosh Devi, Sonu and maternal grandmother have not

been arrayed as accused in present case. Despite the fact that they have been depicted by the father of the victim as a culprit for alluring the victim to develop relations with boys and victim has specifically referred her maternal grandmother as a person who facilitate her introduction and meeting with petitioner, and therefore, not only conduct of victim, also of her father as well as investigating agency not arraying all the persons responsible for eloping and violation of person of victim, as accused is raising suspicion with respect to the veracity of entire prosecution story and thus it is not reliable, so as, at least, to refuse bail to the petitioner.

11. It has been further submitted that co-accused another Gaurav and Sudesh Kumari have already been enlarged on bail on 18.11.2021 and 1. 7.2021 in Cr.M.P. (M) Nos. 1959 of 2021 and 1131 of 2021, whereas other two accused Dr.Indu Chaudhary and Babita Sharma have been enlarged on bail by Ld. Special Judge Una on 4.8.2021.

12. Without commenting on merits of the case but considering principles and factors relevant to be considered at the time of deciding bail application with reference to aforesaid facts and circumstances placed before me, and submissions made by learned counsel for the petitioner as well as learned Deputy Advocate General, I find that at this stage, petitioner is entitled for bail.

13. Accordingly, present petition is allowed and petitioner is directed to be enlarged on bail, subject to furnishing personal bond in the sum of 50,000/- with one surety in the like amount, to the satisfaction of the trial Court, within two weeks from today, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure the presence of petitioner/accused at the time of trial and also subject to following conditions:-

(i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

(ii) that the petitioner shall 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 from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail;

(vii) that in case petitioner indulges in repetition of similar offence(s) then, his

bail shall be liable to be cancelled on taking appropriate steps by prosecution;

(viii) that the petitioner shall not leave the territory of India without prior permission; and

(ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

14. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

15. In case the petitioner violates any condition imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

16. Trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

17. Observations made in this petition hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

18. Petition is disposed of in aforesaid terms.

19. Petitioner is permitted to produce a copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy but if required, may verify it from Website of the High Court.