

(2021) 05 SHI CK 0049

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.604, 605, 606 Of 2021

Geeta Gupta And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 06-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 438, 439

Indian Penal Code, 1860 — Section 120B, 363, 366A, 376

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

Citation : (2021) 05 SHI CK 0049

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Arvind Sharma, S.C. Sharma

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The matter is taken up through video conference.

2. Petitioners Geeta Gupta and Susheela have maintained petitions under Section 438 of the Code of Criminal Procedure for grant of bail, in the event

of their arrest, in case FIR No. 13 of 2021, dated 06.03.2021, under Sections 363, 366A, 376, 120B IPC and Section 4 of POCSO Act, registered at

Police Station New Shimla, District Shimla, H.P. Petitioner Rahul Dhawan @ Dolly maintained a petition under Section 439 of the Code of Criminal

Procedure for grant of bail in the above case. As all the petitions arise out of one incidence, hence taken up together for consideration and disposal.

3. As per the petitioners, they are innocent and have been falsely implicated in the present case. They are permanent residents of the place and

neither in a position to tamper with the prosecution evidence nor in a position to

flee from justice, so they may be released on bail.

4. Police report stands filed. As per the prosecution, on 06.03.2021 complainant made a written complaint to the police, wherein it has been alleged

that the prosecutrix, daughter of the complainant (name withheld), who studies in 10 class, did not return home on 06.03.2021, after attending the

school. In the evening, wife of the complaint received a telephonic call and the prosecutrix informed that she is getting married with one Rahul

Dhawan @ Dolly (one of the petitioners herein). The complainant had suspicion that petitioner Dolly took the prosecutrix with him. On the basis of the

complaint, so made by the complainant, police registered a case under the apt sections and investigation ensued. On 07.03.2021 Rahul Dhawan @

Dolly produced the prosecutrix before the police. The prosecutrix was medically examined, her statement under Section 161 Cr.P.C. was recorded

and her statement under Section 164 Cr.P.C. was also recorded. It has come in the investigation that Rahul Dhawan @ Dolly took the prosecutrix in a

pickup and at Totu market, where they purchased goods for solemnizing marriage. At Shiv Temple, Totu, Rahul Dhawan @ Dolly and the prosecutrix

solemnized marriage in absence of priest. Thereafter, the prosecutrix and Rahul Dhawan @ Dolly stayed in a hotel. Police procured the records qua

the stay of the prosecutrix and Rahul Dhawan @ Dolly in a hotel and qua the date of birth of the prosecutrix. The pickup, which was allegedly used in

the offence, was taken into possession by the police alongwith its documents and key and co-accused, who helped Rahul Dhawan @ Dolly in

committing the crime were also booked. Co -accused Geeta Gupta and Susheela (petitioners herein), clicked photographs of the marriage ceremony

from the mobile phone of petitioner Rahul Dhawan @ Dolly. Co-accused Geeta Gupta and Susheela have already been enlarged on interim bail by this

Court, vide order dated 26.03.2021. It has further come in the police report that the police effected the relevant recoveries. As per the police,

investigation in the matter is complete and now challan is under consideration and will be filed soon. Lastly, it is prayed that the applications of the

petitioners be dismissed, as they were found involved in a serious crime, the petitioners in case at this stage are enlarged on bail, they may tamper with

the prosecution evidence and may also flee from justice.

5. I have heard the learned Counsel for the petitioners, learned Additional

Advocate General for the State and gone through the records, including the police report, carefully.

6. The learned counsel for the petitioners has argued that the petitioners are innocent and they are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as they are permanent residents of the place. He has further argued that investigation in the matter is complete, nothing remains to be recovered either from the petitioners or at their instance, custody of the petitioners is not at all required by the police.

The petitioners are ready and willing to abide by the terms and conditions of bail, in case granted, so considering all the facts and circumstances, which emerge, the petitions may be allowed and the petitioners may be enlarged on bail. Conversely, learned Additional Advocate General has argued

that the petitioner Rahul Dhawan @ Dolly has committed heinous crime and other petitioners Geeta Gupta and Susheela played an active role in commission of the crime. He has further argued that in case, at this stage, the petitioners are enlarged on bail, they may flee from justice or tamper

with the prosecution evidence. Considering the seriousness and gravity of the offence and overall facts and circumstances of the case, the bail

applications of the petitioners may be dismissed.

7. In rebuttal the learned Counsel for the petitioners have argued that the petitioners are local residents of the place and thus they are neither in a

position to flee from justice nor in a position to tamper with the prosecution evidence and the custodial interrogation of the petitioners is not at all

required by the police, as the investigation is complete and now the custody of the petitioners is not at all required. He has further argued that sending

the petitioners (Geeta Gupta and Susheela) behind the bars will not serve any fruitful purpose and keeping petitioner Rahul Dhawan @ Dolly behind

the bars for an unlimited period will also not serve any purpose, as his custody is not at all required by the police and nothing remains to be recovered

at his instance, so the petitions be allowed and the petitioners be enlarged on bail.

8. At this stage, considering the manner in which the incident is alleged to have taken place, the fact that all the petitioners are residents of the place,

so neither in a position to flee from justice nor in a position to tamper with the prosecution evidence, considering the fact that investigation in the matter

is complete, nothing remains to be recovered either from the petitioners or at their instance, petitioners Geeta Gupta and Susheela are joining the investigation and co-operating in it, custody of the petitioners is not at all required by the police, the fact that by sending the petitioners Geeta Gupta and Susheela behind the bars will not serve any fruitful purpose and also the fact that keeping petitioner Rahul Dhawan @ Dolly behind the bars for an unlimited period will also not serve any fruitful purpose, especially when investigation is complete, nothing remains to be recovered either from the petitioners or at their instance and also considering the fact that the petitioners are ready and willing to abide by the terms and conditions of bail, in case granted and also considering all the facets of the case and without discussing them elaborately, this Court finds that the present is a fit case where the judicial discretion to admit the petitioners (Geeta Gupta and Susheela) on bail, in the event of their arrest, in this case, is required to be exercised in their favour. Accordingly, their petitions are allowed and it is ordered that the petitioners, Geeta Gupta and Susheela, in the event of their arrest, in case FIR No. 13 of 2021, dated 06.03.2021, under Sections 363, 366A, 376, 120B IPC and Section 4 of POCSO Act, registered at Police Station New Shimla, District Shimla, H.P., shall be released on bail forthwith, subject to their furnishing personal bond in the sum of Rs.25,000/- (rupees twenty five thousand) each with one surety each in the like amount to the satisfaction of the Investigating Officer.

9. As far as petitioner Rahul Dhawan @ Dolly is concerned, he is also enlarged on bail in case FIR No. 13 of 2021, dated 06.03.2021, under Sections 363, 366A, 376, 120B IPC and Section 4 of POCSO Act, registered at Police Station New Shimla, District Shimla, H.P., subject to his furnishing personal bond in the sum of Rs. 50,000/- (rupees fifty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court.

10. The petitioners are granted bail subject to the following conditions:

- (i) That the petitioners will appear before the learned Trial Court/Police/authorities as and when required.
- (ii) That the petitioners will not leave India without prior permission of the Court.
- (iii) That the petitioners 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.

11. In view of the above, the petitions are disposed of.

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