

(2022) 09 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1933 Of 2022

Jyoti Parkash

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

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

Protection Of Children From Sexual Offences Act, 2012 — Section 6, 17

Citation : (2022) 09 SHI CK 0029

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Sanjay Jaswal, Arvind Sharma, Kamal Kishore Sharma, Gaurav Sharma

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The instant bail application has been maintained by the petitioner, under Section 439 of the Code of Criminal Procedure, for grant of bail, in case FIR No. 127/2022, dated 23.04.2022, under Sections 363, 366-A, 376 of IPC and Sections 6 and 17 of POCSO Act, registered at Police Station Nurpur, District Kangra, 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 resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 23.04.2022, father of the prosecutrix made a complaint to the police, alleging therein that on 04.04.2022, around 12:00/12:30 p.m., the prosecutrix went to close her ATM account in the bank at Sadwan, however, when she did not return from the bank,

he started searching her at his own level, but she could not be traced. On 18.04.2022, the prosecutrix made a telephonic call to the complainant and told him not to worry about her, as she is in Chandigarh with the petitioner. As per the allegations made in the complaint, the petitioner enticed the prosecutrix. Consequently, FIR No. 127/2022, dated 23.04.2022, under Sections 363, 366-A, 376 of IPC and Sections 6 and 17 of POCSO Act, came to be registered against the petitioner and the investigation ensued. On 05.05.2022, in presence of parents of the prosecutrix, search of the house of the petitioner was conducted and the prosecutrix was recovered therefrom. During investigation, it was unearthed that on 04.04.2022, when the petitioner called the prosecutrix to Gaggal, his mother and brother were also accompanying him and took the prosecutrix to their house, confined her there for a month and did not allow her to go outside. During aforesaid period, the petitioner also maintained physical relations with the prosecutrix. After completing all the codal formalities, challan was presented in the learned trial Court. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was involved in a serious crime and there is possibility that in case at this stage he is enlarged on bail, he may flee from justice and may also tamper with the prosecution evidence.

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 reports, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner is innocent and has been falsely implicated in the present case. He has further argued that the petitioner is having love affair with the prosecutrix and entire story of prosecution that he kidnapped the prosecutrix and raped her, is concocted. He has further argued that the petitioner is behind the bars since his arrest and no fruitful purpose will be served by keeping him behind the bars for an unlimited period. He has argued that keeping in view the material, which has come on record, the bail application be allowed.

6. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence, so at this stage, 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.

7. At this stage, considering the age of petitioner, i.e. 29 years, and that of the prosecutrix, the manner in which the offence is alleged to have occurred, the fact that petitioner and the prosecutrix are known to each other, the fact that they had love affair and wanted to marry each other, the fact that the petitioner cannot be kept behind the bars for an unlimited period, as investigation is complete and challan stands presented in the learned trial Court, the fact that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as he is permanent resident of the place, the petitioner is ready and willing to abide by the conditions of bail, if so granted. So,

considering the overall facts of the case, which have come on record and without discussing the same at this stage, this Court finds that the present is a fit case where 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 petitioner, who has been arrested by the police, in case FIR No. 127/2022, dated 23.04.2022, under Sections 363, 366-A, 376 of IPC and Sections 6 and 17 of POCSO Act, registered at Police Station Nurpur, District Kangra, H.P., shall be forthwith released on bail, in this case, subject to his furnishing personal bond to the tune of Rs. 25,000/- (Rupees twenty five thousand), with one surety in the like amount to the satisfaction of learned Trial Court. 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.

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

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