

(2019) 11 RAJ CK 0067
In the Rajasthan High Court

Case No : Criminal Miscellaneous Second Bail Application No. 12166 Of 2019

Luna Ram @ Lunkaran And Ors

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 27-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 366A

Code Of Criminal Procedure, 1973 — Section 167(2), 439

Protection Of Children from Sexual Offences (POCSO) Act, 2012 — Section 7, 8

Citation : (2019) 11 RAJ CK 0067

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Pankaj Kumar Gupta, Laxman Solanki

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioners as well as learned Public Prosecutor and also perused the material on record.

The petitioners have been arrested in FIR No.147/2018 of Police Station Matora, District Jodhpur for the offences punishable under Sections 366-A

IPC. They have preferred this second bail application under Section 439 Cr.P.C.

Learned counsel for the petitioners has submitted that in relation to the FIR No.147/2018 of Police Station Matora, District Jodhpur, the petitioners

were arrested on 22.07.2019 and the only argument raised by them before the trial court is that the police have found prima facie case against them

for the offences punishable under Section 366-A IPC read with Section 7/8 of POCSO Act, however, the charge-sheet in the matter has not been

filed against them within the prescribed time. Learned counsel for the petitioners has submitted that the punishment for the offence punishable under

Section 366-A IPC is up to 10 years whereas the punishment for the offence punishable under Section 7/8 of POCSO Act is 3 years which may

extend up to 5 years. Learned counsel for the petitioners has submitted that taking into consideration the period of sentence provided in the above

referred sections, as per the provisions of Section 167(2) Cr.P.C., the police are required to file charge-sheet against the petitioners within 60 days,

however, in the matter the charge-sheet against the petitioner was not filed on 21.09.2019, the day of limitation i.e. 60 days had expired but the same

was filed on 09.10.2019. Learned counsel for the petitioners has submitted that the trial court has not taken into consideration this aspect of the matter

and has illegally rejected the bail application of the petitioners in which it was prayed that the petitioners may be granted benefit of the compulsive bail.

Reply to the bail application has been filed on behalf of the respondent-State in which the bail application of the petitioners has been opposed.

Learned Public Prosecutor has argued that as a matter of fact the charge-sheet against the petitioners was filed on 19.08.2019, however, the

concerned Magistrate vide order dated 19.08.2019 returned the same with a direction to conduct further investigation and, therefore, it cannot be said

that the charge-sheet against the petitioners was not filed within the prescribed time as per the provision of Section 167(2) Cr.P.C.

After carefully scrutinizing the material available on record, the facts, not in dispute, are that the petitioners were arrested on 22.07.2019 and charge-

sheet against them for the offences punishable under Section 366-A IPC and Section 7/8 of POCSO Act was filed on 09.10.2019. It is also not in

dispute that the sentence provided for the offences, for which the charge-sheet has been filed against the petitioners, is upto 10 years and as such the

police are required to file charge-sheet against the petitioners within 60 days of their arrest.

Having regard to the totality of the facts and circumstances of the case and after taking into consideration the principle laid down in the order dated

14.01.2019 passed by this Court in Paras Ram Vs. State (S.B. Criminal Misc. Bail No.9538/2018,)without expressing any opinion on the merits of the

case, this Court is of the opinion that the petitioners are entitled for default bail, hence, I deem it just and proper to grant bail to the accused petitioners

under Section 439 Cr.P.C.

Accordingly, this second bail application filed under Section 439 Cr.P.C. is allowed and it is directed that petitioners " (1) Luna Ram @ Lunkaran

S/o Amra Ram and (2) Hitesh @ Ekiya S/o Amra Ram shall be released on bail in connection with FIR No.147/2018 of Police Station Matora,

District Jodhpur provided each of them executes a personal bond in a sum of Rs.1,00,000/- with two sound and solvent sureties of Rs.50,000/- each to

the satisfaction of learned trial court for his appearance before that court on each and every date of hearing and whenever called upon to do so till the

completion of the trial.