

(2020) 06 SHI CK 0162

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 931 Of 2020

Madan Lal

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 26-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439
Indian Penal Code, 1860 — Section 363, 366, 376, 376C
Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2020) 06 SHI CK 0162

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jagan Nath, Anil Jaswal, Manoj Bagga

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Instant petition has been moved under Section 439 of the Code of Criminal Procedure for grant of regular bail, in FIR No.144 dated 20.06.2020, under Sections 363, 366, 376, 376-C of the Indian Penal Code and Section 6 of The Protection of Children from Sexual Offences (POCSO) Act, registered at Police Station Dhalli, District Shimla, Himachal Pradesh.

2. Status report has been filed and record has been made available by learned counsel for the parties. According to the status report, in the complaint lodged by the prosecutrix on 19.6.2020 at Police Station Janjehli, District Mandi, following tale was narrated:-

2(i) Prosecutrix was resident of Cemetery Gate in Sanjauli, Shimla and studying in 9th class in a school in 2016, when she developed friendship with the petitioner, who resided in the adjoining area of Navbahar and belonged to village Jood, Tehsil Thunag, District Mandi. Both used to meet each other and were also in contact on phone as well.

2(ii) Petitioner, under a promise of marriage established physical relations with prosecutrix in December 2016 in his room at Sanjauli. On 24.02.2017, again under influence of promise of marriage extended by the petitioner, prosecutrix accompanied him in a train to Kalka, Ambala and Chandigarh. For four days there, she was sexually exploited by him. Thereafter, the prosecutrix returned to her home at Sanjauli, Shimla and the petitioner went to his home in District Mandi.

2(iii) On learning about her pregnancy, the prosecutrix disclosed this fact to the petitioner, whereafter, he accompanied her and got her medically checked up in a hospital. On confirmation of her pregnancy, both started living together at petitioner's place in Sanjauli.

2(iv) On 17.10.2017, a male child was born to them. The allegation in the complaint was that after the child birth, behaviour of the petitioner changed towards her. He started picking up quarrels with her. In March 2020, just prior to the imposition of the nationwide lockdown, petitioner went to reside at his native place at village Jood, Tehsil Thunag, District Mandi. Few days later, on his request, prosecutrix also followed him there. Both of them were residing at petitioner's native place. It has been alleged that the petitioner used to drink and quarrel with the prosecutrix. Allegations of demand of money by the petitioner from prosecutrix have been levelled. A specific instance of 19.6.2020 was quoted, when the petitioner after consuming liquor started quarreling with the prosecutrix and gave beatings to her. It has been complained that the petitioner threatened to do grave physical violence to the prosecutrix as well as to the child. Prosecutrix was threatened that child will be taken away from her by the petitioner. This incident triggered her. Whereafter, she called the police station Janjehli District Mandi, and narrated her story to the police officials. Eventually, instant FIR was registered at Police Station Dhalli, District Shimla.

3. According to the status report, petitioner was arrested on 20.6.2020 at 9.15. p.m. During investigation, a certificate was produced by the mother of the prosecutrix reflecting her (prosecutrix) date of birth as 27.06.2002. On this basis, the investigation agency determined age of prosecutrix as 17 years 11 months 22 days. The statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure .

4(i). Learned counsel for the petitioner contended that the prosecutrix and the petitioner had developed a friendship, which gradually deepened. Afterwards they got married in February 2017 with the consent and blessings of their parents. From this wedlock, a male child was born to them on 17.10.2017 at Kamla Nehru Hospital Shimla. Learned counsel has placed on record a Birth certificate issued on 22.06.2020 by Kamla Nehru Hospital Shimla, registering birth of a male child 'Parth Chauhan' born to petitioner as child's father and prosecutrix as child's mother & wife of the petitioner. This certificate bears registration No. B-2017:2-90088-005258 and 18.10.2017 as its date of registration. The Aadhaar Card of the prosecutrix has also been placed on record

wherein her date of birth has been reflected as 27.3.1999. Her marital status reflected there records her as wife of the petitioner. Learned counsel for the petitioner has also placed on record the statement of the prosecutrix recorded on 19.6.2020 at Police Station Janjehli, District Mandi, wherein inter-alia she admitted having solemnized marriage with the petitioner.

4(ii) Learned counsel has further submitted that the petitioner was not aware that the prosecutrix was a minor. He believed her to be a major. Prosecutrix and the petitioner were married with the consent and blessings of their parents. They co-habited and have a male child from this wedlock. Therefore, the allegations levelled against the petitioner in the FIR are incorrect. He further submitted that allegations against the petitioner are in the nature of marital discord. False implication & innocence has also been pleaded. It is also undertaken in the petition that petitioner will abide by all the conditions, which may be imposed upon him in case of grant of bail and that he will not influence the witnesses or temper with the prosecution evidence in any manner.

Learned Additional Advocate General has opposed the grant of bail on the ground of nature of offences alleged against him.

5. A perusal of the status report and the record made available by the parties reveals that:-

5(i) The date of birth of prosecutrix as per certificate handedover by her mother during investigation to the police is 27.06.2002. However, her date of birth recorded in her Aadhaar Card is 27.03.1999. What is the correct & actual date of birth of the prosecutrix can only be verified by the Investigating Agency from an authenticated and valid certificate/source.

5(ii) At this stage, considering the facts of the case as they emerge in prosecutrix's complaint and statements recorded by the police, prima facie, it appears that the prosecutrix was sufficiently mature for her age. She was very well acquainted with the petitioner. She had willingly accompanied the petitioner to his room in Sanjauli, Shimla and thereafter to various other places. There is no allegation of threatenings by the petitioner. In her complaint, she says that she allowed the petitioner to establish physical relations with her only under influence of marriage promised by him. At this stage, it does not appear that this promise did not materialize. Though in her complaint, she only mentions that after her pregnancy and after the birth of her child in 2017 she had started co-habiting with the petitioner. However, in her statement recorded under Section 164 of Code of Criminal Procedure, she herself addresses the petitioner as her husband and his relations as her in-laws. She gives her reference there as wife of the petitioner. Her marital status in the Aadhaar Card is that of wife of petitioner. A male child was admittedly born to the couple. The child's birth certificate records both the parties as parents. It is her own statement that she had been co-habiting with petitioner either at his place in Shimla or at his native place with her in-laws for last about three years. Therefore, considering the facts of the

case at this stage, it would not be appropriate to hold the alleged false promise of marriage and the alleged resultant acts against the petitioner, to deny him bail in Covid times.

According to the status report, the petitioner was arrested on 20.06.2020 and since then he is behind the bars. Petitioner has no criminal history. Investigation in the case though is going on, but in the peculiar facts of this case no fruitful purpose will be served by keeping the petitioner behind the bars any further. Petitioner is permanent resident of village Jood, Tehsil Thunag, District Mandi Himachal Pradesh, as such his presence can always be secured in the trial. Thus, the present petition is allowed. Petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.50,000/- with one local surety in the like amount to the satisfaction of the learned trial Court having jurisdiction over the concerned Police Station, subject to the following conditions:-

(i) Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. He shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law.

(ii). Petitioner neither himself nor through any of his relations shall threaten the complainant or influence her in any manner whatsoever.

(iii). Petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.

(iv). Petitioner will not leave India without prior permission of the Court.

(v). Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.

(vi). In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vii). Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter.

With the aforesaid observations, the present petition stands disposed of, so also

the pending miscellaneous applications, if any.

Authenticated copy be supplied to learned counsel for the parties by the Secretary/Private Secretary.