

(2019) 11 SHI CK 0048

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1980, 1981 Of 2019

Mehar Chand And Ors

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154, 164, 439
Indian Penal Code, 1860 — Section 34, 323, 325, 363, 376, 511
Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2019) 11 SHI CK 0048

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Sushmit Bhatt, Jyotirmay Bhatt, Shiv Pal Manhans, P.K. Bhatti, Raju Ram Rahi, Gaurav Sharma

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in case FIR No. 129 of 2019, dated 25.09.2019, under Sections 363, 376, 511, 323, 325 read with Section 34 IPC and Section 4 of POCSO Act, registered in Police Station Dharampur, District Solan, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are permanent residents of District Kullu, Himachal Pradesh and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 25.09.2019 the prosecutrix (name withheld) got her statement recorded under Section 154

Cr.P.C. The prosecutrix alleged that she is a student of 10th Class and her father is missing since 2009. She used to live with her mother and younger brother. Her elder sister has been married. A month back she went to the house of her massi at Ludhiana, where she was acquainted with one Ragini, who assured her to get job for her. The prosecutrix further alleged that last week she went to the residence of Ragni at Pinjore and on 24.09.2019, at about 01:30 p.m., when she came to market, her friend Sikander made a telephonic call to her and told that if she is going to market then she can board the vehicle of his friends. Subsequently, a van stopped near her and a boy came out, who asked about Sikander and also made a telephonic call to Sikander. The prosecutrix boarded the said van and there were four occupants in the van, who were having liquor. They offered liquor to her, but she refused. During their conversation, the prosecutrix heard the names Om and Hanni. The prosecutrix was taken to Gurukripa Hotel, Dharampur, where all the four persons consumed liquor and later on a boy slept with her. Thereafter, Hanni knocked the door and when she opened the door he also came inside the door and slept with her. Hanni tried to molest her, so she ran away from the room. The prosecutrix went to another room, where other persons were sleeping, but Hanni came there, so the prosecutrix, through window, went on the chajja (eave), wherefrom she fell down. The prosecutrix raised hue and cry so people of the area came for her rescue. Accused Hanni and others fled away from the spot. Upon the statement, so given by the prosecutrix, police registered a case and the investigation ensued. The prosecutrix was medically examined and it was opined by the Medical Officer that there is nothing suggestive of the fact that sexual intercourse has not taken place. Police collected the scientific samples and also made relevant recoveries. The radiological age of the prosecutrix was opined in between 15 to 19 years. Police prepared the spot map and recorded the statements of the witnesses. The prosecutrix was sent to Child Welfare Committee, Solan. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. During the course of investigation it was unearthed that the prosecutrix was missing from her house and qua this Case No. 338 of 2019 dated 28.06.2019 was registered. Police procured the records qua the date of birth of the prosecutrix. The vehicle used in the commission of the crime, i.e., HP64A-1251, was taken into possession. On 25.09.2019 all the four accused persons, i.e., Bhupinder Kumar @ Hanni, Sanjay Kumar, Om Prakash and Mehar Chand were arrested. As per the police, accused Sanjay Kumar was the driver of the vehicle and after consuming liquor, he went to his home. Petitioners Om Prakash and Mehar Chand and co-accused Bhupinder Kumar @ Hanni sexually molested the prosecutrix. When the prosecutrix tried to save her, she went on the chajja, wherefrom she fell down and sustained severe injuries. As per the police, challan has been prepared and it will be presented in the learned Trial Court soon. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were found involved in a serious crime. There is possibility that in case at this stage if they are enlarged on bail, they may flee from justice. The petitioners can also tamper with the prosecution evidence, so

their applications be dismissed.

4. I have heard the learned Vice Counsel for the petitioners, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Vice Counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case. He has further argued that the petitioners are permanent residents of District Kullu, H.P. and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has further argued that no fruitful purpose will be served by keeping the petitioners behind the bars for an unlimited period, as the investigation is complete and the 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. He has further argued that keeping in view the overall aspects of the case, the petitions may be allowed and the petitioners be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners have committed a heinous offence, so at this stage, in case they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice. He has further argued that petitioners could jump over the bail, in case granted. He has prayed that the bail applications of the petitioners be dismissed.

6. In rebuttal the learned Vice Counsel for the petitioners has argued that the petitioners cannot be kept behind the bars for an unlimited period, especially when investigation is complete and the custody of the petitioners is not at all required by the police, so the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the statement of the prosecutrix, the petitioners are permanent residents of District Kullu and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the petitioners are ready and willing to abide by the terms and conditions of bail, if granted, challan has been prepared and will be presented in the learned Trial Court soon, the fact that the custody of the petitioners is not at all required by the police, as the investigation is complete and also considering the fact that the petitioners cannot be kept behind the bars for an unlimited period and also considering the overall facts of the case, which have come on record, and without discussing them at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, the petitions are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 129 of 2019, dated 25.09.2019, under Sections 363, 376, 511, 323, 325 read with Section 34 IPC and Section 4 of POCSO Act, registered in Police Station Dharampur, District Solan, H.P., shall be released on bail forthwith in this case, 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

learned Trial Court. The bail is granted 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.

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