

(2020) 07 SHI CK 0314

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 651 Of 2020

Muzahir Hussain

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 376, 506

Citation : (2020) 07 SHI CK 0314

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : B.C. Negi, Y.W. Chauhan, Nitin Thakur, Sumesh Raj, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this petition filed under Section 439 of the Code of Criminal Procedure, the petitioner has prayed for grant of regular bail in FIR No. 46/2020, dated 13.04.2020, registered under Sections 376 and 506 of the Indian Penal Code at Police Station Majra, District Sirmaur, H.P.

2. The FIR in issue stands lodged against the petitioner, inter alia, on the grounds that the prosecutrix, who is married and having two children, used to visit the shop of the petitioner for purchasing household articles, as the petitioner was running a Kiryana shop. Prosecutrix happened to be on talking terms with the petitioner, as they were neighbours. On 11.04.2020 at around 3:10 p.m., while prosecutrix was going on her Scooty from Toklanagla to Gulabgarh to meet her aunt, the petitioner obstructed her way near a Poultry Farm on the pretext of talking to her. Thereafter, he forcibly caught the prosecutrix and took her inside the Poultry Farm, where he committed sexual intercourse with her against her wishes. Prosecutrix escaped from his clutches, but petitioner criminally intimidated her by giving threats to do away with her life, if she will disclose the

incident to anyone. As per the prosecutrix, she could not report the matter to police on account of the Curfew which was imposed by the State and later on, she narrated the incident to her mother and husband, which led to the registration of FIR in issue. On the basis of said FIR, the petitioner was arrested and he is in custody since 13.04.2020.

3. Status report stands filed, as also a copy of the examination report submitted by the State Forensic Science Laboratory, Himachal Pradesh.

4. Learned Senior Counsel for the petitioner has argued that the petitioner is not guilty of the offence alleged against him and he has been falsely implicated in the matter. He further argued that as the petitioner is in custody since 13.04.2020 and no recovery etc. is to be effected from him, therefore, no purpose is going to be achieved by detaining him in custody. He also submitted that in the event of grant of bail, the petitioner shall comply with all the conditions that may be imposed by the Court. As per him, the petitioner is a permanent resident of Toka Nagla, P.O. Jamniwala, Tehsil Paonta Sahib, District Sirmaur, H.P. and his entire family is residing there. He belongs to a respectable family. He also submitted that the factum of the petitioner being innocent is also borne out from the contents of SFSL report itself, in terms of which, neither any blood nor any semen was detected on the exhibits mentioned therein. On these basis, he submitted that the petition be allowed and the petitioner be ordered to be released on bail.

5. Opposing the same, learned Deputy Advocate General has argued that taking into consideration the gravity of the offence alleged against the petitioner and also the fact that earlier also, similar complaints stand lodged against him, the petition be dismissed. She has argued that in the event of release of the petitioner on bail, there is every possibility of the petitioner trying to win over the witnesses by threatening or influencing them. She further argued that as the petitioner happens to be a local resident of the area concerned, his release on bail shall have an adverse impact on the trial itself. On these basis, she has prayed that the present bail petition be dismissed.

6. I have heard learned counsel of the parties and have also gone through the documents on record, including the status report and SFSL report.

7. Whether or not the petitioner is guilty, is a matter of trial and, therefore, this Court is restraining itself from making any observations on merits of the case. Suffice to say that the petitioner is in custody since 13.04.2020 and as of now, no recovery etc. is to be effected from him. As far as the contention of learned Deputy Advocate General to the effect that earlier also, similar complaint stood filed against the petitioner is concerned, record demonstrates that cancellation report stood prepared by the police, as the allegations levelled against the petitioner were found to be incorrect and unsubstantiated. The prosecutrix happens to be a married lady and record suggests that there was some unexplained delay in lodging the FIR also. Therefore, in these circumstances, in

my considered view, it will not be in the interest of justice to keep the petitioner in custody. As far as the apprehension expressed by learned Deputy Advocate General that upon release on bail, the petitioner may try to hamper the course of trial is concerned, that apprehension of the State can be taken care of by this Court by imposing strict conditions upon the petitioner.

8. Therefore, as this Court at this stage sees no reason to keep the petitioner in custody, this petition is allowed and the petitioner is ordered to be released on bail in FIR No. 46/2020, dated 13.04.2020, registered under Sections 376 and 506 of the Indian Penal Code at Police Station Majra, District Sirmaur, H.P., subject to his furnishing bail bonds in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of learned Additional Chief Judicial Magistrate/Judicial Magistrate 1st Class, Paonta Sahib, District Sirmaur, H.P. The petitioner shall also abide by the following conditions:

"(a) He shall attend the Trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not 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 Court or the Police Officer; and

(d) He shall not leave the territory of India without prior permission of the Court."

9. It is clarified that the findings which have been returned by this Court while deciding this petition are only for the purpose of adjudication of the present bail application and learned Trial Court shall not be influenced by any of the findings so returned by this Court in the adjudication of this petition during trial of the case. It is further clarified that in case the petitioner does not comply with the conditions which been imposed upon him while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of bail. The petition stands disposed in above terms.