

(2020) 05 SHI CK 0050

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 634 Of 2020

Navneet Sharma

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 21-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 328, 354A
Protection Of Children from Sexual Offences Act, 2012 — Section 8

Citation : (2020) 05 SHI CK 0050

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Deepika Sharma, Sushant Vir Singh Thakur, Dinesh Thakur, Sanjeev Sood, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. Status report filed, which is ordered to be taken on record.
2. By way of this petition, a prayer has been made for release of the petitioner on bail, in F.I.R. No.185/2019, dated 28.11.2019, registered against him at Police Station Majra, District Sirmaur, H.P., under Sections 354A and 328 read with Section 34 of the Indian Penal Code (hereinafter referred to 'IPC' for short) and Section 8 of the Protection of Children from Sexual Offences (hereinafter referred to 'POCSO' for short) Act.
3. The allegations against the petitioner are that a complaint was lodged by one Smt. Sultana, the mother of the victim, at Police Station Majra, on 27.11.2019, that the victim on the pretext of being dropped for tuition by the present petitioner and one more accused, was taken in a vehicle and sexually abused by serving her intoxicant in a soft drink.
4. As per the prosecution, the victim is a minor, as her age at the time of alleged incident was 17 years and 6 months. On the basis of the F.I.R. which stood

registered against the complaint so filed by Smt. Sultana, the petitioner and the other accused are in custody.

5. Learned counsel for the petitioner submitted that the present petitioner was arrested by the Thana Majra police on 28.11.2019 and since then he is in custody. She has further argued that taking into consideration the fact that the Challan already stands filed in the Court and no further recovery etc. is to be effected from the petitioner, no purpose is going to be served by detaining the petitioner in custody, because till the time the petitioner is held guilty by a Competent Court of Law, he has the right to be presumed innocent. She has further argued that even otherwise investigation clearly demonstrates that the petitioner is not guilty of the offences alleged against him and he has been falsely implicated in the matter by the family of the victim to settle some personal score. Learned counsel has also stated that the application which was filed by the petitioner for release of bail before the learned Trial Court, primarily stood dismissed, on the ground that the investigation was still pending and now as the investigation is complete and the Challan stands filed in the Court, therefore, also, petitioner deserves to be released on bail. She has submitted that the petitioner shall abide by all the terms and conditions which may be imposed by the Court in the event of his being released on bail.

6. Opposing the application, learned Additional Advocate General has stated that taking into consideration the gravity of the offences which stand alleged against the petitioner, it will not be in the interest of justice to release the petitioner on bail, because there is each and every possibility that he may try to tamper with the evidence and thus create some impediment in the conduct of trial by trying to influence the witnesses. He has also argued that as the petitioner is a local resident of the area concerned, his release on bail will otherwise also not send a correct message to the society. On these basis, he has opposed the petition.

7. Having heard learned counsel for the petitioner as also learned Additional Advocate General, in my considered view, this bail petition deserved to be allowed.

8. The allegations against the petitioner is of allegedly committing the offences as defined in Section 354A, 328 of IPC and Section 8 of POCSO Act. Whether or not, the petitioner is guilty of the offences as alleged, is a matter of trial and this Court would refrain from making any comment upon the merit of the case. Suffice is to say at this stage, the Court primarily besides taking into consideration the gravity of the offences alleged, has to consider as to whether the petitioner is having any previous history and is there any possibility of committing same offence in case he is ordered to be released on bail.

9. Record demonstrates that there is no previous history indicating that the petitioner has earlier also indulged in the similar kind of offences which are alleged against him in the F.I.R. in issue. The petitioner is stated to be of 20 years old and is in custody for more than 5 months now. There is nothing on

record to substantiate that in case the petitioner is released on bail, then in future he may indulge in similar activities as alleged against him. Even otherwise, in case he does so, the law will take its own course and the State also is always at liberty to approach the Court for cancellation of the bail. However, as of now, this Court sees no reason to detain the petitioner in custody as the interest of the State can be well protected by imposing strict conditions upon the petitioner and conferring liberty upon the State to approach this Court for cancellation of the bail in case petitioner infringes any of the conditions so imposed upon him.

10. In view of the observations made hereinabove, this petition is allowed and the petitioner is ordered to be released on bail in case F.I.R. No.185/2019, dated 28.11.2019, registered against him at Police Station Majra, District Sirmaur, H.P., under Sections 354A and 328 read with Section 34 of the IPC and Section 8 of the Protection of POCSO Act, on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount within two weeks to the satisfaction of the learned Trial Court, subject to the following conditions:-

i) Petitioner 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;

ii) He shall not tamper with the prosecution evidence;

iii) He shall not make any inducement, threat or promise to any person acquainted with the facts of the case; and

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

11. 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 the trial of the case. It is further clarified that in case the petitioner does not comply with the conditions which have been imposed upon him while granting the present bail, the State shall be at liberty to approach this Court for the cancellation of the bail. The petition stands disposed of in the above terms.