
(2017) 04 SHI CK 0048
In the High Court Of Himachal Pradesh
Case No : 389 of 2017

RAHUL THAKUR @ LUCKY

APPELLANT

Vs

STATE OF HIMACHAL PRADESH

RESPONDENT

Date of Decision : 11-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#), [Section 154](#), [Section 164](#) - Special powers of High Court or Court of Session regarding bail - Information in cognizable cases - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 376](#), [Section 506](#), [Section 328](#), [Section 354\(a\)](#) - Punishment for rape - Punishment for criminal ,intimidation - Causing hurt by means of poison, etc., with intent to commit an offence - Assault or criminal force to woman with intent to outrage her modesty
[Protection Of Children From Sexual Offences Act, 2012](#), [Section 4](#), [Section 8](#)

Citation : (2017) 04 SHI CK 0048

Hon'ble Judges : Chander Bhusan Barowalia

Bench : Single Bench

Advocate : Anoop Chitkara, Neha Scott, Virender Kumar Verma, Rajat Chauhan

Final Decision : Disposed

Judgement

1. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No.2 of 2017, dated 04.01.2017, under Sections 376, 354(A), 328, 506 IPC & Sections 4 and 8 of POCSO Act, registered at Police Station, Nerwa, District Shimla, H.P.
2. As per the petitioner, he is innocent and has been falsely implicated in the present case. The petitioner has further averred that taking into consideration his age and the time since when he is behind the bars, he may be released on bail.
3. Police reports stand filed. As per the prosecution, on 04.01.2017 the child

victim/prosecutrix (name withheld) made a statement under Section 154 Cr.P.C. before the police, wherein it has been alleged that she is a student of 10+1 and on 31.12.2016, after the school she was staying in her uncle's room at Bhatti Nala. On the subsequent morning, the prosecutrix did not go to her home, as her cousin sister (uncle's daughter) was alone. Around 8:15 p.m., the petitioner, who was acquainted with the prosecutrix, called her on her mobile. The petitioner was willing to come to the house where the prosecutrix was staying. Around 9:15 p.m. the petitioner came there and they (petitioner, prosecutrix and her cousin sister) remained seated near the heater. The prosecutrix felt stomach pain, upon which the petitioner gave her a pain killer and she consumed the same, however, she did not know about the said pain killer. After some time, when the prosecutrix was talking with the petitioner, she felt restlessness and giddiness. Thereafter, all of them went to sleep separately. The prosecutrix lost her consciousness. On the subsequent morning, around 10:30 a.m., the prosecutrix was awakened by her cousin, but she could not stand. At that time the petitioner was there in the room. All of them came to Nerwa and around 11:00 a.m. the cousin sister of the prosecutrix went to her house. The prosecutrix also wanted to go to her native place, however, she could not go as she forgot her bag in the room of her uncle. The petitioner and prosecutrix again came back to the room for taking the bag, however, as she was still under the influence of medicine, which the petitioner gave to her, she slept in the room. The petitioner took advantage of the unconsciousness of the prosecutrix and committed rape upon her. The prosecutrix was feeling intense pain and due to that she consumed 5-6 tablets of pain killer, which she was having in her purse. The petitioner also threatened the prosecutrix and then she became unconscious. When the prosecutrix regained consciousness, around 2:30 p.m., she was at Bhatti Nala. On being noticed by her neighbours, her brother was telephonically informed, however, in the interregnum, the petitioner and cousin sister of the prosecutrix also came there and they took her to Nerwa hospital, in a private vehicle. While they were enroute, near Shawala road, brother of the prosecutrix reached and he took all of them to Nerwa Hospital. The prosecutrix was admitted in the hospital. The petitioner and cousin sister of the prosecutrix left the hospital. On 02.01.2017, the prosecutrix was referred to I.G.M.C. Shimla. On the statement of the prosecutrix, police investigated the matter and FIR was registered. The prosecutrix was medically examined and statements of the witnesses were also recorded. Section 328 IPC was added in the case. Accused was arrested and medically examined. After completing all the codal formalities, police presented the challan in the learned Trial Court. Lastly, the prosecution has prayed that the bail application of the petitioner may be dismissed.

4. I have heard Mr. Anoop Chitkara, learned counsel for the petitioner, Mr. Virender Kumar Verma, learned Additional Advocate General and has gone through the record carefully.

5. Mr. Chitkara, learned counsel for the petitioner has argued that the prosecutrix divulged her medical history to the doctor, while she was being medically

examined by the doctor. However, her medical history, recorded by the doctor, nowhere suggests that any offence was committed on her by the petitioner. He has further argued that there is no case of sexual assault, as no semen was traced/found on any of the recovered articles. As per the learned counsel for the petitioner, taking into consideration the statement of the prosecutrix, on its face value, present is a totally false case. He has argued that the petitioner is only 19 years of age and has been falsely implicated. The learned counsel for the petitioner has placed reliance on the following judicial pronouncements: 1. State of Maharashtra vs. Anand Chintaman Dighe, 1990(1) SCC 397;

2. The State of Rajasthan vs. Balchand, 1977(4) SCC 308; &

3. Mohd. Juyal vs. State, 2014(17) R.C. R.(Criminal) 704.

Conversely, Mr. Verma, learned Additional Advocate General, has argued that the petitioner has committed a heinous crime. He has further argued that the petitioner had no right to visit the prosecutrix when she was staying with her cousin. He has further argued that the petitioner has also no business to accompany the prosecutrix on the subsequent day. In case the petitioner is enlarged on bail, it will give a wrong signal in the society. Lastly, he has argued that keeping in view the heinousness of the offence, the bail application of the petitioner may be rejected. In rebuttal, Mr. Chitkara, learned counsel for the petitioner has vehemently argued that no case is made-out against the petitioner and the petitioner has been falsely implicated in the present case. He has further argued that taking into consideration the facts, which have come on record, the petitioner may be released on bail.

6. I have gone through the rival contentions of the parties and the police reports in detail.

7. Firstly, this Court would like to deal with the judicial pronouncements cited by Mr. Chitkara. The Hon"ble Apex Court in State of Maharashtra vs. Anand Chintaman Dighe, 1990(1) SCC 397, has held as under vide para 7 of the judgment: "7. There are no hard and fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the court. Where the offence is of serious nature the court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of offence, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial and the reasonable apprehension of witness being tampered with, the larger interest of the public or such similar other considerations." The learned counsel for the petitioner has primarily accentuated that even at the stage of bail, the Court is required to go into the merits of the case. The above referred judgment also exemplifies that in cases of serious crimes, the Court has to consider nature of crime, seriousness of the offence, character of the evidence, circumstances of the case, possibility of securing the presence of the accused, apprehension of

witnesses being tampered with and the larger interest of the public. Another vital aspect, which the above referred judgment deals with, is that there are no hard and fast rules qua grant/refusal of bail and each case has to be considered on its own merits. This Court is also of the opinion that merits of the case are to be touched while exercising discretionary jurisdiction under Section 439 Cr.P.C. The spirit of the judgment (supra) is fully applicable to the facts of the present case.

8. Mr. Chitkara has also placed reliance on another judgment of Hon''ble Apex Court in *The State of Rajasthan vs. Balchand*, 1977(4) SCC 308, wherein vide para 2 of the judgment it has been held as under: "2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative." It is beaten law of the land that the fundamental rule is bail, not jail. This Court is also of the opinion that there is no denial to the above rule, thus the judgment (supra) is also fully applicable to the present case.

9. Lastly, Mr. Chitkara, has relied upon judgment of Hon''ble Delhi High Court, rendered in *Mohd. Juyal vs. State*, 2014(17) R.C. R.(Criminal) 704, wherein it has been held that the nature of allegations are required to be considered at the stage of the bail. This Court is also of the view that while granting/refusing bail, the nature of the allegations does play an imperative role and the same cannot be overlooked at any cost.

10. It has come in the prosecution story that when the prosecutrix was taken for treatment and examined by the doctor, she did not disclose anything with respect to offence committed upon her by the petitioner. Further, as per the final opinion of the doctor, the possibility of sexual assault cannot be ruled-out. The prosecutrix, as per her own statement, on the next day consumed 5-6 tablets, which she was carrying in her purse. The prosecutrix has made material improvements time and again when her statement was recorded. She has also made many improvements in her statement under Section 164 Cr.P.C. Further no semen was detected from any exhibits in the forensic science laboratory. No injury was found on the person of the prosecutrix by the doctor. The presence of the cousin of the prosecutrix in the room and other material aspects, which have come on record, have also been considered and without discussing the same at this stage, and also considering the age of the petitioner, delay in recording the statement of the prosecutrix under Section 164 Cr.P.C., wherein she has made improvements and also the law, as cited by the learned counsel for the petitioner, and the fact that the petitioner is not in a position to tamper with the prosecution evidence and also not in a position to flee from justice, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Therefore, it is ordered that the petitioner be released forthwith on bail, on his furnishing personal bond

to the tune of `25,000/- (rupees twenty five thousand only) with one surety in the like amount to the satisfaction of learned Trial Court, in case FIR No.2 of 2017, dated 04.01.2017, under Sections 376, 354(A), 328, 506 IPC & Sections 4 and 8 of POCSO Act, registered at Police Station, Nerwa, District Shimla, H.P. The bail is granted subject to the following conditions: (i) That the petitioner will appear before the learned Trial Court as and when required.

(ii) That the petitioner will not leave India without prior permission of the Court.

(iii) That the petitioner 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.

11. In view of the above, the petition is disposed of.