

(2019) 09 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1587 Of 2019

Rajesh Jiwan Bhai Bharwad

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 164(5a), 509
Information Technology Act, 2000 — Section 67, 67A

Citation : (2019) 09 SHI CK 0018

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Vinay Sharma, Ashok Sharma, Nand Lal Thakur, Shiv Pal Manhans, Raju Ram Rahi, Gaurav Sharma, Sunil Kumar

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been moved by the petitioner under Section 438 of the Code of Criminal Procedure for releasing him on bail, in the event of his arrest, in case FIR No. 196 of 2019, dated 03.08.2019, under Section 509 IPC and Sections 67 and 67A of the Information Technology Act, 2000, registered in Police Station Sadar, Kullu, District Kullu, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, so he may be released on bail.

3. Police report stands filed. As per the prosecution story, on 03.08.2019 police received two emails from the prosecutrix (name withheld). The first email had an attachment of screenshot and disclosed that the petitioner shared a obscene video, which had 225 comments and 25 shares. Second email is a complaint qua

making viral fake MMS and photo on whatsapp and facebook. The prosecutrix alleged that her photo is being attached with an obscene MMS. On the premise of the emails of the prosecutrix, the police registered a case and the investigation ensued. Statement of the prosecutrix was recorded under Section 164(5a) IPC. Record qua the facebook id of the petitioner has been procured. Statements of the witnesses were also recorded. During the course of investigation, police found the involvement of the petitioner and one Kashmir Singh. Lastly, it is prayed that the bail application of the petitioner be dismissed, as he was involved in circulating the obscene MMS. The petitioner is resident of Gujarat and in case he is released on bail, he may tamper with the prosecution evidence and may also flee from justice.

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

5. The learned Counsel for the petitioner has argued that the petitioner is innocent and he is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. The petitioner is ready and willing to abide by the terms and conditions of bail, if granted. He has further argued that the petitioner is joining and co-operating in the investigation and his custody is not at all required, so he may be released on bail. Conversely, learned Advocate General, has argued that the petitioner was found involved in a serious offence and it has come in the police investigation that the petitioner is the main kingpin. He has further argued that the petitioner is resident of Gujarat and in case at this stage he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. He has further argued the petitioner, through his criminal acts, tarnished the image of two ladies, as he made viral the obscene MMS. So, at this stage the petitioner may not be released on bail and his application be dismissed.

6. In rebuttal, the learned counsel for the petitioner has argued that the petitioner is innocent, as did not upload any obscene video and he has been falsely implicated in the instant case, so the petition be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the provisions of the law and the punishment prescribed thereunder, the documents qua uploading of some posts by the petitioner relating to the above case, the fact that the petitioner is resident of Gujarat and in case at this stage he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, the fact that it has come in the police investigation that the petitioner is bigwig in the alleged offence and considering the overall material, which has come on record, and without discussing the same at this stage, this Court finds that the present is not a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

8. In view of what has been discussed hereinabove, the petition, which sans

merits, deserves dismissal and is accordingly dismissed.