

(2019) 10 SHI CK 0082

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1735 Of 2019

Rashpal Singh Alias Tota Ram

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 363, 366, 376, 506
Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2019) 10 SHI CK 0082

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Digvijay Singh, P.K. Bhatti, Raju Ram Rahi, Gaurav Sharma, Harish Chander

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present bail application under Section 439 of the Code of Criminal Procedure has been maintained by the petitioner for grant of bail in case FIR No. 46/19, dated 21.03.2019, under Sections 363, 366, 376 and 506 IPC and Section 4 of POCSO Act, registered at Police Station Jawali, District Kangra, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. Further, he is permanent resident of Himachal Pradesh and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. So, he be released on bail.

3. Police report stands filed. As per the prosecution story, on 20.03.2019, father of the prosecutrix (complainant) made a complaint to the police, alleging therein that her daughter, who is minor, has been put into prostitution by the present petitioner and his wife and has been sold to someone. On the basis of the complaint, so filed by the complainant, FIR No. 46/19, dated 21.03.2019, under

Sections 363, 366, 376 and 506 IPC and Section 4 of POCSO Act, came to be registered against the petitioner. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found involved in a heinous crime and in case at this stage the petitioner is enlarged on bail, he may flee from justice. The petitioner can also tamper with the prosecution evidence, so his bail application be dismissed.

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

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is permanent resident of District Kangra 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 petitioner behind the bars for an unlimited period. He has argued that keeping in view the material, which has come on record, i.e. statement of the prosecutrix under Section 164 Cr. P.C., wherein she has denied all the allegations made against the petitioner, the bail application be allowed. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a heinous offence, so at this stage, in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. He has prayed that the bail application of the petitioner be dismissed.

6. Heard. After going through the statement of the prosecutrix recorded under Section 164 Cr. P.C., wherein she has not stated anything with respect to alleged sexual intercourse and taking into consideration the overall aspects of the case, which have come on record and without discussing them at this stage, this Court finds that the petitioner cannot be kept behind the bars for an unlimited period and the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No. 46/19, dated 21.03.2019, under Sections 363, 366, 376 and 506 IPC and Section 4 of POCSO Act, registered at Police Station Jawali, District Kangra, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of Rs. 10,000/- (rupees ten thousand) with one surety in the like amount to the satisfaction of the learned Trial Court.

The bail is granted subject to the following conditions:

(i) That the petitioner will appear before the learned Trial Court/Police/authorities 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.

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