

(2021) 05 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No.524 Of 2021

Ravinder Kumar

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 03-05-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 439

Indian Penal Code, 1860 — Section 363, 366, 370, 376

Protection Of Children From Sexual Offences Act, 2012 — Section 6

Citation : (2021) 05 SHI CK 0002

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Anjali Soni Verma, Sudhir Bhatnagar, Kunal Thakur, Svaneel Jaswal

Final Decision : Dismissed

Judgement

Sandeep Sharma, J

1. Bail petitioner namely, Ravinder Kumar, who is behind the bars since 28.1.2020, has approached this Court in the instant proceedings filed under

Section 439 of the Code of Criminal Procedure, praying therein for grant of regular bail in case FIR No. 445/2019 dated 31.12.2019, under Sections

363, 376, 370 of IPC and Section 6 of the POCSO Act, registered at police Station, Sadar, District Una, Himachal Pradesh.

2. Since above named bail petitioner is behind the bars and has no means to engage lawyer for himself, Ms. Anjali Soni Verma, Advocate has been appointed as legal aid counsel to defend the bail petitioner in the instant proceedings.

3. Sequel to orders dated 19.3.2021 & 19.4.2021, respondent-State has filed the status report prepared on the basis of the investigation carried out by

the Investigating Agency, perusal whereof reveals that on 31.12.2019, complainant Tara Chand, who happened to be father of the victim/prosecutrix, lodged a complaint at police Station, Sadar, District Una, Himachal Pradesh, alleging therein that her minor daughter, aged 17 years (name withheld to protect her identity), has not come to home since 16.12.2019. He disclosed to the police that he has made all attempts to ascertain the whereabouts of her missing daughter from his relatives as well as other friends, but whereabouts of her are not known and as such, appropriate action in accordance with law be taken. In the aforesaid background, police initially lodged a case under Section 363 and 366 of IPC against the unknown person, however, subsequently, on the basis of call details report police Visited Rampur (UP) and allegedly recovered the victim/ prosecutrix from the house of Kishan Singh son of Sh. Rajinder Singh. Victim/prosecutrix in her statements recorded under sections 161 and 164 Cr.P.C., alleged that person namely Vijay Kumar, with whom she wanted to solemnize marriage had taken her to Moradabad(UP), where present bail petitioner sexually assaulted her on two occasions against her wishes in a room near railway station. She alleged that bail petitioner Ravinder Kumar sent Vijay Kumar back to his home, but further sold her to person namely Kishan Kumar. Victim/prosecutrix in her aforesaid statements categorically stated before the police as well as Judicial Magistrate that person namely Vijay Kumar committed no wrong with her and it is only Ravinder Kumar i.e. present bail petitioner, who has sexually assaulted her against her wishes. In the aforesaid background, present bail petitioner came to be named in the FIR and he was arrested on 28.1.2020. Since, challan stands filed in the competent court of law and nothing remains to be recovered from him, prayer has been made on behalf of the petitioner for grant of regular bail.

4. Mr. Sudhir Bhatnagar, learned Additional Advocate General while fairly admitting the factum with regard to filing of the challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by bail petitioner, he does not deserve any leniency. Mr. Bhatnagar, further submits that there is not only allegation of sexual assault against the present bail petitioner, rather evidence adduced on record by the prosecution clearly reveals that present bail petitioner after having

sexually assaulted the victim/ prosecutrix further sold her to another person namely Kishan Kumar and as such, prayer having been made on behalf of the petitioner for grant of bail deserves to be rejected outrightly.

5. Having heard learned counsel representing the parties and perused the material available on record, though this Court finds that victim/prosecutrix,

who was 17 years old at the relevant time, had eloped with the accused Vijay Kumar with a view to solemnize marriage and they both had gone to

Moradabad, but if the statements of victim/ prosecutrix recorded under Sections 161 and 164 Cr.P.C, are read in conjunction, it clearly reveals that

present bail petitioner, who is a police official, taking undue advantage of innocence and minority of victim/prosecutrix, not only sexually assaulted

victim/prosecutrix against her wishes on two occasions, rather further sold her to person namely Kishan Singh. As per the statement of the

victim/prosecutrix, she alongwith person namely Vijay Kumar had taken one room near railway station Moradabad(UP), where present bail petitioner

sexually assaulted her against her wishes. Statements of victim/prosecutrix given to the police and Judicial Magistrate reveals that present bail

petitioner taking undue advantage of the situation and plight of both victim/ prosecutrix and Vijay Kumar, sexually assaulted victim/prosecutrix on two

occasions against her wishes and thereafter to hush up the matter further sold her to other accused namely Kishan Kumar.

6. No doubt, as per status report investigation in the case is complete and nothing remains to be recovered from the bail petitioner, but having taken

note of the fact that present bail petitioner is a police official, there appears to be considerable force in the submission of learned Additional Advocate

General that in the event of petitioner's being enlarged on bail, he may not only flee from the justice, but may also cause harm to the

victim/prosecutrix and as such, prayer made on behalf of the petitioner cannot be accepted at this stage. Moreover, this Court cannot lose sight of the

fact that present bail petitioner is a police official, who otherwise after having met victim/prosecutrix and Vijay Kumar ought to have either informed

the parents of the victim/prosecutrix or the Vijay Kumar or should have handed over both of them to the police of Himachal Pradesh, but in the case

at hand, present bail petitioner taking advantage of the situation, not only committed heinous crime of rape upon prosecutrix, rather also indulged in

illegal trade of human flesh by selling the prosecutrix to person namely Kishan Singh and as such, he does not deserve any leniency.

7. The Honâ??ble Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* (2010) 14 SCC 496, has laid down the following principles

to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

8. As per aforesaid judgment, Court while considering the bail is required to keep various principles in mind i.e. prima facie case against the accused,

nature and gravity of offence, severity of punishment, likelihood of repeating of the offence by accused etc. In the case at hand, statement of the

victim/prosecutrix recorded under Sections 161 and 164 Cr.P.C., clearly reveal prima-facie case against the accused and since bail petitioner is from

State of U.P., there is not only every likelihood of his fleeing from justice, rather in the event of his being enlarged on bail, he may cause harm to the

victim/prosecutrix, whose statement is yet to be recorded by trial Court.

9. Consequently, in view of the above, the present petition is dismissed being devoid of any merit. However, liberty is reserved to the petitioner to file

afresh at appropriate stage, in accordance with law, if required and desired.

10. Having taken note of the fact that bail petitioner is behind the bars for more than one year, this Court hopes and trust that learned court below shall

make all out efforts to conclude the trial expeditiously, so that liberty of the accused is not curtailed for indefinite period during the trial. Otherwise

also, it has been already made aware to all Courts on the administrative side that jail appeals as well as cases of under trial are required to be heard

and decided on priority basis.

11. Registry is directed to apprise the learned Court below with regard to passing of instant order.