

(2023) 01 SHI CK 0044

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2700, 2701 Of 2022

Ravinder Singh And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 376D
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 8
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2023) 01 SHI CK 0044

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Deepak Kaushal, Abhishek Verma, Manoj Chauhan, Varun Chandel

Final Decision : Allowed

Judgement

Satyen Vaidya, J

1. Both these petitions have been heard and are being decided together by a common order as both the petitions arise from the same FIR and involve common question of facts and law.
2. Petitioners are accused in case FIR No. 244 of 2022, dated 11.11.2022, under Sections 376-D of IPC and Section 4 and 8 of POCSO Act, registered at Police Station Poanta Sahib, District Sirmour, H.P.
3. Petitioners have prayed for grant of bail in the above noted cases, on the grounds that they are innocent and have been falsely implicated. Despite completion of investigation, nothing incriminating has been found against them. The unexplained delay in lodging of FIR prima face points towards the falsity to contents contained therein. Petitioner in Cr.MP(M) No. 2700 of 2022, is permanent resident of Village Pashmi and P.O. Shillai, Tehsil Shillai, District Sirmour, H.P. and petitioner in Cr.MP(M) No. 2701 of 2022 is permanent resident of Village Behdewala, Tehsil Poanta Sahib, District Sirmour, H.P.

4. On notice, respondent has placed on record status reports from time to time. The latest status report dated 10.01.2023 reveals that the investigation is complete and challan has been presented in the Court on 09.01.2023. It is further revealed from the status report that on 11.11.2022, the victim had reported the matter to the police and she had alleged that the petitioners had committed rape upon her on 02.11.2022. As per victim, she was working in Himalaya Food International as a Labourer. Petitioners were also stated to be working in the same establishment. She also alleged indecent behavior against one Harmeet Singh.

5. Petitioner Bhajan Singh was arrested on 11. 11.2022 and petitioner Ravinder Singh was arrested on 12.11.2022. The bail petitions of the petitioners have been opposed, on the ground that they are accused of heinous offence and deserve no leniency.

6. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the investigation records.

7. As per police case, the victim on the date of alleged offence was seventeen years and ten months old. Her date of birth is stated to be 02.01.2005. It is not the case of the respondent that victim is of weak intellect. In this view of the matter, sufficient explanation for delay in lodging the complaint with police has not come forth.

8. During the course of hearing of the petitions, Sub Inspector (P) Rajat Police Station, Kala Amb, was present in the Court with the investigation record. On perusal of the record, it has been found that on 12.11.2022, statement of victim under Section 164 of Cr.P.C. was recorded before learned Judicial Magistrate First Class. She had substantially resiled from her version as given to the police. The record has further revealed that no corroboration has been found to the allegations of victim either from the analysis of samples by SFSL, Junga or the DNA profiling conducted thereon.

9. Though, at the stage of deciding the bail petition, this Court will not minutely scan the material collected by the investigating agency, yet the same can always be looked into for prima facie assessment of seriousness and gravity of allegations against accused.

10. The investigation is complete and challan stands filed. Respondent has not expressed any apprehension about non-availability of petitioners for trial. It is also not alleged against them that their release on bail will adversely affect the trial. Petitioner in Cr.MP(M) No. 2700 of 2022, is permanent resident of Village Pashmi and PO Shillai, Tehsil Shillai, District Sirmour, H.P. and petitioner in Cr.MP(M) No. 2701 of 2022 is permanent resident of Village Behdewala, Tehsil Poanta Sahib, District Sirmour, H.P. They are in custody since 11.11.2022 and 12.11.2022, respectively.

11. The allegations against petitioners are subject to proof. Pre-trial incarceration

cannot be ordered as a matter of rule. No fruitful purpose shall be served by allowing the petitioners to be kept in custody for indefinite period. The completion of trial is likely to take considerable time.

12. No criminal antecedents have been attributed to the petitioners.

13. In the peculiar facts and circumstances of the case, the petitions are allowed and petitioners are ordered to be released on bail in case FIR No. 244 of 2022, dated 11.11.2022, under Sections 376-D of IPC and Section 4 and 8 of POCSO Act, registered at Police Station Poanta Sahib, District Sirmour, H.P., on their furnishing personal bond each in the sum of Rs. 25,000/- with one surety each in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

i) Petitioners shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

ii) Petitioners shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioners shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioners shall not leave India without permission of learned trial Court till completion of trial.

14. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.