
(2019) 10 SHI CK 0067

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1880 Of 2019

Saddam Hussain

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 25-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 323, 354, 363, 366A, 452, 506

Protection Of Children From Sexual Offences Act, 2012 — Section 8, 17

Citation : (2019) 10 SHI CK 0067

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : B.B. Vaid, Anil Jaswal, Pardeep Thakur

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Petitioner is praying for grant of regular bail under Section 439 of the Code of Criminal Procedure in FIR No. 37 of 2019 dated 10.06.2019, registered at Police Station Nerwa, District Shimla under Sections 323, 354, 363, 366-A, 452, 506 read with Section 34 of the Indian Penal Code and Section 8 and 17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter in short referred to as POCSO Act).

2. I have heard Sh. B.B. Vaid, learned counsel for the petitioner and Sh. Anil Jaswal, learned Additional Advocate General for the State. I have also gone through the status report filed on 23.10.2019 by ASI Mansa Ram and the record produced today by SI Pardeep Thakur, SHO P.S. Nerwa, to the extent it was necessary for adjudication of this petition.

3. As per the status report and record, the facts are:-

3(i) Applicant on 09.06.2019 at about 9 P.M. came to the house of the complainant and pressurized her to marry him; on complainant's refusal to do

so, the applicant threatened to do away with her life; complainant getting scared called for her father who had gone in the neighbourhood, where-after the applicant left her house.

3(ii) At around 11 P.M. the same night, while the complainant was asleep, the applicant again entered her home, woke her up; threatened her that either she accompany him, marry him or otherwise he will kill her; on her refusal, she was dragged by the bail petitioner alongwith two other persons, one of whom was carrying a stick 'danda'; she was beaten with stick; in order to save her life, she raised hue and cry and shouted, which compelled her father, who had gone in the neighbourhood, to return; on hearing his voice, the bail petitioner alongwith his two accomplices fled away from the spot.

3(iii) The bail petitioner stopped the complainant and her father the next day (10.06.2019), while they were going to the Police Station to lodge FIR and asked them to compromise the matter.

3(iv) The status report also reveals that:-

(a) The complainant in the FIR herself disclosed her age as 17 years.

(b) During the investigation, it came out that name of the complainant was not entered in the Parivar Registrar of her father Sh. Abal Hussain, in Gram Panchayat Podhiyan.

(c) The complainant had studied up to primary standard; her School Leaving Certificate obtained from Govt. Central Elementary Education School, P.O. Bharanu, Sub Tehsil Nerwa, District Shimla, shows her date of birth as 22.05.2010. On that basis, age of the complainant was taken by the prosecution as 12 years 9 months and 24 days, on the date of alleged incident.

(d) It has also come out in the investigation that this date of birth recorded in the School Leaving Certificate is not based on any contemporary authenticated record. The same has been carried forward from another School Certificate meant for nomads where probability of recording the date of birth merely on the statements of parents cannot be ruled out. Thus, at this stage, to rely upon this document with conclusiveness in respect of age of the complainant vis-a-vis curtailing the liberty and freedom of petitioner will not be appropriate.

(e) The allegations levelled in the FIR against the bail-petitioner are that he had come to the house of the complainant firstly at 9 P.M. asking her to marry him and secondly, at 11 P.M. with the same request. The second time, he was stated to be accompanied with two other persons, one of them was allegedly carrying a stick. These other two persons have so far not been identified by the prosecution.

(f) As per the case put forward in the FIR, it is apparent that the bail petitioner was very well aware about the near vicinity of the father of the complainant when he allegedly visited her house at 11 p.m.

(g) About the incident alleged to have been happened on 10.06.2019 while

complainant along with her father went to lodge the FIR; the allegations are only in respect of bail petitioner asking them to compromise the matter.

(h) Status report does not reveal any previous criminal history of the bail petitioner.

(i) Bail applicant is in judicial custody at Sub Jail Kaithu w.e.f. 15.06.2019. Investigation of the case is complete and the challan stands already filed on 23.08.2019. Nothing remains to be recovered from the bail petitioner.

4. It is apt to refer to the guidelines for grant/or refusal of bail, reiterated by the Hon'ble Apex Court in Cr. Appeal No. 1603 of 2019, titled Shri P. Chidambaram vs. Central Bureau of Investigation, decided on 22.10.2019, relevant segments whereof are reproduced hereinafter:-

"17. Expression of prima facie reasons for granting or refusing to grant bail is a requirement of law especially where such bail orders are appealable so as to indicate application of mind to the matter under consideration and the reasons for conclusion. Recording of reasons is necessary since the accused/prosecution/victim has every right to know the reasons for grant or refusal to grant bail. This will also help the appellate court to appreciate and consider the reasonings for grant or refusal to grant bail. But giving reasons for exercise of discretion in granting or refusing to grant bail is different from discussing the merits or demerits of the case. At the stage of granting bail, an elaborate examination of evidence and detailed reasons touching upon the merit of the case, which may prejudice the accused, should be avoided. Observing that "at the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided", in Niranjana Singh, it was held as under:-

"3.Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself."

22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations

(vide *Prahlad Singh Bhati v. NCT, Delhi and another* (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

23. In *Kalyan Chandra Sarkar v. Rajesh Ranjan and another* (2004) 7 SCC 528, it was held as under:-

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* (2002) 3 SCC 598 and *Puran v. Rambilas* (2001) 6 SCC 338.)

Referring to the factors to be taken into consideration for grant of bail, in *Jayendra Saraswathi Swamigal v. State of Tamil Nadu* (2005) 2 SCC 13, it was held as under:-

"16.The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in *State v. Capt. Jagjit Singh* AIR 1962 SC 253 and *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118 and basically they are - the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a

reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case....."

24. After referring para (11) of Kalyan Chandra Sarkar, in State of U.P. through CBI v. Amarmani Tripathi (2005) 8 SCC 21, it was held as under:-

"18. It is well settled that the matters to be considered in an application for bail are (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 charge; (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 tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280 and Gurcharan singh v. State (Delhi Admn.)(1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.....".

Hon'ble Apex Court in Criminal Appeal No. 1309 of 2018 titled Sangitaben Shaileshbhai vs. State of Gujarat and anr., held as under:-

".....while adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle wherein Court takes into consideration, inter alia, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. However, the Court has to only opine as to whether there is prima facie case against the accused. The Court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.....

5. In view of the above, I am of the considered view that no fruitful purpose will be served in case the bail petitioner is allowed to continue in judicial custody. He is a resident of Village Tarshanu, P.O. Ruslah, Tehsil Nerwa, District Shimla. His presence can always be secured in the trial. Accordingly, the petition is allowed. Bail petitioner is ordered to be released on bail in FIR No. 37 of 2019 dated 10.06.2019, registered at Police Station Nerwa, District Shimla under Sections 323, 354, 363, 366-A, 452, 506 read with Section 34 of the Indian Penal Code and Section 8 and 17 of the Protection of Children from Sexual Offences Act,

2012, on his furnishing personal bail bond to the tune of Rs. 50,000/-with one local surety in the like amount to the satisfaction of the learned Sessions Judge, Shimla, subject to following conditions:-

- i) The petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law.
- ii) The petitioner shall not hamper the investigation in any manner whatsoever.
- iii) The petitioner undertakes not to contact the complainants, to threaten or browbeat them or to use any pressure tactics in any manner whatsoever.
- iv) The petitioner shall not leave India without prior permission of the Court.
- v) The petitioner undertakes not to make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

It is clarified that the observations made above are only for the purpose of adjudication of the present bail petition and the learned Trial Court shall not be influenced by any of these observations while deciding the case on merits. It shall be open for the prosecution to move for cancellation of the bail in case the petitioner abuses the liberty granted and breaches the conditions of bail. The petition stands disposed of in the above terms.