

(2019) 10 SHI CK 0032

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petitions (M) No. 1830, 1831 Of 2019

Shubham Kumar And Ors

APPELLANT

Vs

State Of Himachal Pradesh And Ors

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

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

Indian Penal Code, 1860 — Section 34, 363, 376

Protection Of Children From Sexual Offences Act, 2012 — Section 4

Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3(2)(v)

Citation : (2019) 10 SHI CK 0032

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Naveen K. Bhardwaj, Shiv Pal Manhans, P.K. Bhatti, Raju Ram Rahi

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. The present bail applications have been maintained by the petitioners under Section 439 of the Code of Criminal Procedure seeking their release in case FIR No. 162 of 2019, dated 31.08.2019, under Sections 363, 376 read with Section 34 IPC and Section 4 of POCSO Act and Section 3(2)(V) of SC&ST Act, registered in Police Station Nagrota Bagwan, District Kangra, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. The petitioners are residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 31.08.2019 one Shri Ashwani Kumar @ Raju made a written complaint to the police and alleged that he has four children, three daughters and a son and his niece, who is

prosecutrix (name withheld) also resides with him. He has stated that his elder daughter, who is 15 years of age, another prosecutrix (name withheld) on 30.08.2019 alongwith his mother and niece went to Kohala to his sister's house and they reached Nagrota Bagwan at about 2/2:30 p.m. As per the complainant, when his mother stopped for purchasing some goods and returned to road, both the prosecutrix were missing. Despite best efforts both of them could not be traced and the cell phone of his niece was switched off. The complainant suspected that some unknown person took away the prosecutrix and his niece. Upon the complaint, so made by the complainant, a case was registered and the investigation ensued. On 31.08.2019, from a room of Hotel/restaurant Amrit both the girls were traced and the complainant identified the girls as his daughter and niece. The statements of both the prosecutrix were recorded under Section 161 Cr.P.C. Police recorded the statements of witnesses and both the prosecutrix were sent for medical examination, but their parents refused to get them medically examined, so their medical could not be conducted. During the course of investigation one of the prosecutrix was found to be 18 years of age. On 01.09.2019 the police arrested the petitioners and they were medically examined. On 03.09.2019 statements of the prosecutrix were recorded under Section 164 Cr.P.C. Records qua the date of birth of the prosecutrix were obtained. Police collected the scientific sample for analysis and also procured the record of the hotel and it was unearthed that on 30.08.2019 petitioner Kunal Spehia booked a room in Amrit Hotel and on 31.08.2019 the room was vacated. As per the record, four persons stayed in the said room. During the course of investigation it was unearthed that both the girls belong to Schedule Caste and records qua their caste have also been procured by the police. Report from RFSL, Dharamshala, qua the footage from DVR is awaited. Lastly, it is prayed that the bail application of the petitioners be dismissed, as the petitioners were found involved in a serious crime. There is possibility that in case at this stage they are enlarged on bail, they may flee from justice. The petitioners can also tamper with the prosecution evidence, so their 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 report, carefully.

5. The learned Counsel for the petitioners has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioners are residents of the place and they are neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that both the prosecutrix were not medically examined, so it cannot be said that they were sexually molested by the petitioners. There is nothing on record which could prove that the petitioners subjected the girls to sexual assault. He has further argued that no fruitful purpose will be served by keeping them behind the bars for an unlimited period. He has argued that keeping in view the age of the petitioner, who are only 19 and 20 years age, they may be enlarged on bail. He has argued that custody of the petitioners is not at all

required by the police, so the petition be allowed and the petitioners be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioners have committed a heinous crime and in case at this stage they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice. He has prayed that the bail applications of the petitioners be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioners cannot be kept behind the bars for an unlimited period and keeping in view their age, the applications be allowed and the petitioners be enlarged on bail.

7. At this stage, considering the age of the petitioners, who are only 19 and 20 years old (petitioner Shubham Kumar and Kunal Spehia, respectively), the manner in which the offence is alleged to have been committed by the petitioners, the fact that the material on record does not show that the girls have been subjected to sexual assault by the petitioners, the petitioners are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, they are ready and willing to abide by the terms and conditions of bail, if so granted, considering the overall facts, which have come on record, and without discussing the same at this stage and also the fact that the petitioners cannot be kept behind the bars for an unlimited period, so this Court finds that the present is a fit case where the judicial discretion to admit the petitioners on bail is required to be exercised in their favour. Accordingly, the petitions are allowed and it is ordered that the petitioners, who have been arrested by the police, in case FIR No. 162 of 2019, dated 31.08.2019, under Sections 363, 376 read with Section 34 IPC and Section 4 of POCSO Act and Section 3(2)(V) of SC&ST Act, registered in Police Station Nagrota Bagwan, District Kangra, H.P., shall be released on bail forthwith in this case, subject to their furnishing personal bond in the sum of Rs. 25,000/- (rupees twenty five thousand) each with one surety each in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

(i) That the petitioners will appear before the learned Trial Court/Police/authorities as and when required.

(ii) That the petitioners will not leave India without prior permission of the Court.

(iii) That the petitioners 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.

8. In view of the above, the petitions are disposed of.