

(2022) 03 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 490 Of 2022

Shukar Rishi

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439

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

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

Citation : (2022) 03 SHI CK 0030

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Vijender Katoch, Shiv Pal Manhans, Yudhbir Singh Thakur, Bhupinder Thakur

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The present bail application has been maintained by the petitioner, under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No.162 of 2020, dated 13.10.2020, under Sections 363, 366, 376 of the Indian Penal Code and Section 6 of the Protection from Children from Sexual Offence Act, 2012, registered at Police Station Damtal, 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. He is permanent resident 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 sending him behind the bars for an unlimited period, so he be released on bail.

3. Police report stands filed. As per the prosecution story, on 13.10.2020, Smt. Rajmati wife of Shri Nandu, resident of village Majra, Tehsil Indora, District Kangra, came to the Police Station and made a complaint alleging therein that

she has three daughters and one son. On 12.10.2020, she had gone in the fields for cutting paddy crop and when she returned back, her daughter-victim was not at home. The other children disclosed that she had gone on the tap for washing rice, but did not return back. She searched her at her own in the neighbour and relations, later on, she suspected that one boy, namely, Shukar, (petitioner herein) resident of Bihar, was doing work with her for the last few months and is residing in the adjoining room and after that he has gone to Khanpur at Pathankot and her daughter is having contact of his mobile number and they were talking with each other, she thought that he had allured her and taken her away and when she made a call on his mobile number, he told that the victim is with him. On this complaint, FIR was registered against the petitioner. During the course of investigation, statement of the victim was recorded, under Section 164 of the Code of Criminal Procedure and her medical was also examined. Lastly, it is prayed that the instant bail application may be dismissed, as the petitioner has committed a heinous offence and in case, at this stage, he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the instant bail petition may be dismissed.

4. I have heard the learned counsel for the petitioner, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. Learned counsel for the petitioner has argued that the petitioner is permanent resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by sending him behind the bars for an unlimited period even challan stands presented before the learned trial Court, so the custody of the petitioner is not at all required by the police for any purpose. It has been argued that the petitioner cannot be kept behind the bars for an unlimited period, so the petitioner may be enlarged on bail by allowing the instant bail petition.

6. On the other hand, learned Additional Advocate General has argued that the petitioner has committed a serious crime and in case, at this stage, he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail application of the petitioner may be dismissed.

7. In rebuttal, the learned counsel for the petitioner has argued that the petitioner is permanent resident of the place, neither in a position to flee from justice nor in a position to tamper with the prosecution evidence. Investigation is complete and even challan stands presented in the learned trial Court, so the custody of the petitioner is not at all required by the police for any purpose. It has been argued that the petitioner cannot be kept behind the bars for an unlimited period, so the petitioner may be enlarged on bail by allowing the instant petition.

8. At this stage, taking into consideration the age of the petitioner, the manner in which the offence is alleged to have been committed, the fact that the petitioner is permanent resident of the place, neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the investigation is complete, even challan stands presented in the learned trial Court, so the custody of the petitioner is not at all required by the police for any purpose, also considering the facts that the petitioner cannot be kept behind the bars for an unlimited period, the petitioner is ready and willing to abide by the terms and conditions of the bail, in case he is enlarged on bail and also considering the overall facts, which have come on record and without elaborately discussing the same at this stage, this Court finds that 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 instant petition is allowed and it is ordered that the petitioner, in case FIR No. 162 of 2020, dated 13.10.2020, under Sections 363, 366, 376 of the Indian Penal Code and Section 6 of the Protection from Children from Sexual Offence Act, 2012, registered at Police Station Damtal, District Kangra, be forthwith released on bail on his furnishing personal bond to the tune of ` 50,000/- (rupees fifty thousand only) with one surety in the like amount to the satisfaction of the 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.

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

10. Needless to say that the observations made hereinabove are only confined for adjudication of the present case and the same shall have no bearing on the merits of the main case, which shall be adjudicated on its own.

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