
(2019) 05 SHI CK 0071

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellenous Petition (M) No. 698 Of 2019

Sonu Lal @ Rinku

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 02-05-2019

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, 17
Prohibition Of Child Marriage Act, 2006 — Section 9, 11

Citation : (2019) 05 SHI CK 0071

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Parmod Singh Thakur, S.C. Sharma, Shiv Pal Manhans, P.K. Bhatti,
Raju Ram Rahi

Final Decision : Allowed

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. 186 of 2016, dated 06.07.2016, under Sections 363, 366, 376 IPC, Sections 6 and 17 of POCSO Act and Sections 9 and 11 of Child Marriage Prohibition Act, registered in Police Station Balh, District Mandi, 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 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 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 06.07.2019, the father of the prosecutrix (name withheld) made a complaint to the police stating

that on 03.07.2016 the petitioner took the prosecutrix. Upon the complaint, so moved by the complainant, police registered a case and investigation ensued. Record qua date of birth of the prosecutrix was obtained and she was found to be born on 25.11.2001. Despite best efforts, the petitioner could not be traced and it was unearthed during the course of investigation that with the help of his mother and brother, the petitioner managed to flee from his house at Kurali. Police recorded the statements of the witnesses. It was unearthed that the prosecutrix gave birth to a male child in ZH, Solan, and during the birth of child mother and brother of the petitioner were present. As the mother and brother of the petitioner were also found involved in the offence, FIR against them was also registered. Police recorded the statement of the prosecutrix and later on her statement under Section 164 Cr.P.C. was also got recorded. The petitioner, who was evading his arrest, joined the investigation on 27.01.2019 and he was accordingly arrested. Police completed the investigation and after completion thereof presented the challan in the learned Trial Court on 28.01.2019. Police got conducted the DNA test and it was found that the petitioner is biological father and prosecutrix is biological mother of the infant. As per the police, the petitioner is very clever person and in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. Lastly, it is prayed that the bail application of the petitioner be dismissed as the petitioner was involved in a serious offence and in case he is released on bail, he may tamper with the prosecution evidence and may also flee from justice.

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 petitioner has argued that the petitioner has been falsely implicated in the present case. It has been further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period. The petitioner is neither in a position to tamper with the prosecution evidence, nor in a position to flee from justice, so he may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence and in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. It has been argued that the bail application of the petitioner may be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner cannot be kept behind the bars for an unlimited period. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, so he may be enlarged on bail.

7. At this stage, after taking into consideration the age of the petitioner and that of the prosecutrix, their relationship, fact that they are parents of new born baby, considering the statement of the prosecutrix under Section 164 Cr.P.C., the petitioner is neither in a position to flee from justice nor in a position to tamper

with the prosecution evidence, he cannot be kept behind the bars for an unlimited period and all other material, which has come on record, and without discussing the same at this stage, this Court finds that the ends of justice would only be met in case the petitioner is released on bail. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No. 186 of 2016, dated 06.07.2016, under Sections 363, 366, 376 IPC, Sections 6 and 17 of POCSO Act and Sections 9 and 11 of Child Marriage Prohibition Act, registered in Police Station Balh, District Mandi, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of ` 25,000/- (rupees twenty five thousand) with one surety in the like amount to the satisfaction of the learned 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.

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

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