
(2020) 05 SHI CK 0030

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 573 Of 2020

Tenzin Tsogyam

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439

Indian Penal Code, 1860 — Section 376

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

Citation : (2020) 05 SHI CK 0030

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Manoj Pathak, S.C. Sharma, P.K. Bhatti, Kamal Kishore

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The matter is taken up through video conference.
2. 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. 26 of 2019, dated 25.02.2019, under Section 376 IPC and Section 6 of POCSO Act, registered in Police Station East (Chotta Shimla), District Shimla, H.P.
3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. The petitioner is 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 keeping him behind the bars for an unlimited period, so he be released on bail.
4. Police report stands filed. As per the prosecution story, on 25.02.2019 mother of the victim/prosecutrix (name withheld) made a written complaint to the police wherein it is alleged that on 25.02.2019, at about 6:45 p.m. the petitioner forcibly touched private body parts of her daughter (prosecutrix), who is ten

years old. Upon the complaint, so made by the complainant, police registered a case and investigation ensued. Police visited the spot and prepared the spot map. The spot was photographed and statements of the witnesses were recorded. The prosecutrix was medically examined and relevant scientific samples were preserved, which were sent for forensic analysis. On 26.02.2019 the petitioner was arrested and medically examined. Police got recorded the statement of the prosecutrix under Section 164 Cr.P.C. Record qua date of birth of the prosecutrix was also procured by the police. On completion of investigation, police presented the challan before the learned Trial Court on 24.04.2019 and prosecution witnesses are being examined. Now, the case is listed for examination of prosecution witnesses on 27.04.2020. As per the police, in case the petitioner is enlarged on bail, he may threaten the witnesses and may also abscond. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner has committed a serious crime. In case the petitioner is enlarged on bail, at this stage, he may tamper with the prosecution evidence and may also flee from justice, so the bail application of the petitioner be dismissed.

5. 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.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. 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, as he is resident of the place. He has further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, challan stands presented in the Court and nothing is to be recovered at the instance of the petitioner. He has further argued nothing against the petitioner has come in the forensic examination report, so the petition may be allowed and the petitioner may be enlarged on bail. Conversely, the 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 cannot be kept behind the bars for an unlimited period, especially when investigation is complete, challan stands presented in the learned Trial Court and in the wake of the fact that custody of the petitioner is not at all required by the police and the fact that nothing has come against him even in the forensic reports, so the petition be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the manner in which offence is alleged to have committed by the petitioner, the fact that forensic evidence suggests nothing

against him, the petitioner is behind the bars for the last more than a year and he cannot be kept behind the bars for an unlimited period, he is resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, also considering the fact that investigation is complete, challan stands presented in the learned Trial Court and the custody of the petitioner is not at all required by the police, so 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 her favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police in case FIR No. 26 of 2019, dated 25.02.2019, under Section 376 IPC and Section 6 of POCSO Act, registered in Police Station East (Chotta Shimla), District Shimla, 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.

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

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