

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2413/2019

Reserved on : 6.1.2020

Date of Decision: 24.1.2020

Bhup Singh

... Petitioner.

Versus

State of Himachal Pradesh

...Respondent

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Vacation Judge.

Whether approved for reporting?¹

For the Petitioner : Mr. Peeyush Verma, Advocate.

For the Respondent : Mr. Nand Lal Thakur, Additional Advocate General and Mr. Rajat Chauhan, Law Officer, for the State.

Anoop Chitkara, Vacation Judge

The petitioner, who is under arrest, on being arraigned as an accused in FIR number 159/2019 dated 9.10.2019, registered under Sections 452 and 376 of Indian the Penal Code, 1860 and Sections 4 and 6 of the

¹Whether reporters of Local Papers may be allowed to see the judgment?

Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'), in the file of Police Station, Karsog, District Mandi, H.P., disclosing non-bailable offences, has come up before this Court under Section 439 of the Code of Criminal Procedure, seeking regular bail.

2. Status report stands filed. I have seen the status report(s) as well as the Police report under Section 173(2) CrPC, to the extent it was necessary for deciding the present petition, and heard learned Counsel for the parties.

3. Prior to the present bail petition, the petitioner had filed a petition under Section 439 CrPC, before Special Judge, Mandi, District Mandi, HP. However, vide order dated 18.10.2019, the Court dismissed the petition, on the grounds that his release on bail may hamper fair investigation; may make inducement, threat or promise to the prosecution witnesses acquainted with the facts of the case, including the victim and her family members and may also flee from justice and that the offence is heinous and serious in nature.

FACTS

4. The gist of the First Information Report and the investigation is that on 9.10.2019, the mother of the victim, visited Police Station, Karsog,

District Mandi, accompanied by the victim for lodging her complaint. In the Police Station, her statement under Section 154 Cr.P.C. was recorded, in which, she mentioned that she stays in her matrimonial home. She has two children, a son aged 13 years and a daughter aged 14 years. She further mentioned that her daughter is deaf from childhood. She further mentioned that she cannot even walk on her own and she takes her to the toilet. On October, 8, 2019, at 7:30 p.m., she was going to attend the wedding in the village. Near the door of her house, she noticed the petitioner, Bhup Singh present. On this, she asked him that why he has come there, on which he went back from there. After that, she put lock on the door and placed her daughter inside the room and after ensuring that the door is locked, she went to attend the wedding. She returned at 10:30 p.m., and noticed that the door was broken. She found her daughter to be sleeping and there was no blanket on her and she found her Salwar to be blood stained. On this, she suspected that the petitioner had raped her daughter and that she be medically examined. Upon this, Police registered the FIR mentioned above and took the victim for her medical examination to Civil Hospital at Karsog. Subsequently, the police party also complied with the procedural requirements under the CrPC and arrested the petitioner.

ANALYSIS AND REASONING:

5. The Doctor, who conducted her medical examination, vide MLC dated 9.10.2019 noticed as follows:- “no sign of any physical violence over the body”. The Doctor also mentioned that she was not menstruating. On examination her genital, she noticed that there was no discharge of blood. However, she did not notice any external injury. The Doctor obtained vaginal swab as well as blood for the purpose of chemical examination. The Doctor opined that there is no evidence of physical violence on the body. However, the possibility of sexual intercourse could not be ruled out and she reserved her final opinion on receipt of the report of Forensic Science Laboratory.

6. The Police took the victim for recording her statement under Section 154 of the Code of Criminal Procedure, however, the victim could not speak.

7. The report from Forensic Science Laboratory dated 15.10.2019, did not deduct semen on clothes of the victim, vaginal swab and quilt cover. Therefore, the Forensic Science Laboratory did not find any semen from the clothes of the victim or from her vaginal swab. After receipt of the report of Forensic Science Laboratory, the Doctor, who had examined the victim

stated that possibility of sexual intercourse could not be ruled out. However, she did mention that no semen was deducted from her vaginal swab.

8. In Paragraph-3 of the bail petition, the petitioner specifically mentioned that the mother of the victim had been purchasing daily needs and ration items from him, on credit basis. It is further stated that she had also purchased apple cartons and trays from the petitioner, on credit basis, but despite requests, she did not pay. He further stated that he has no concern with the alleged offence.

9. In the medical report, the Doctor did not find even a single trace of sexual assault. The Doctor did not find any injury over any portion of her body nor the Laboratory deducted any semen from the vaginal swab. Unfortunately, the victim herself cannot speak. The allegation of the mother is also based on suspicion because she stated that when she was leaving to attend the wedding, she had noticed the accused there. However, when she returned home, although she found the hinge of the door to be broken, but did not notice the accused present there.

10. Pre-trial incarceration needs to be justified depending upon the heinous nature of the offence, terms of the sentence prescribed in the

Statute for such a crime, accused fleeing from justice, hampering the investigation, and doing away with witnesses. The Court is under the Constitutional obligation to safeguard the interests of the victim, the accused, the society, and the State. It is also prudent to mention that she had a son and there is no mention about his presence. She specifically stated that she stays with her children. The material so far collected, to convict the accused with the alleged occurrence if it actually happens, still is not enough to deny him bail.

11. Given the above reasoning, in my considered opinion, the judicial custody of the petitioner/accused is not going to serve any purpose whatsoever, and I am inclined to grant bail on the following grounds, but subject to stringent conditions:

- a) The report under Section 173(2) CrPC stands filed.
- b) The petitioner/accused is in judicial custody since 9.10.2019.
- c) The petitioner is a permanent resident of the address mentioned in the memo of parties, as such presence can always be secured.
- d) The petitioner has no criminal history.

12. Consequently, the present petition is allowed. The petitioner/accused shall be released on bail in the present case, in

connection with the FIR mentioned above, on his furnishing personal bond in the sum of INR 10,000/- (Rupees ten thousand) with two sureties in the like amount, to the satisfaction of the learned Trial Court/Chief Judicial Magistrate/Addnl. Chief Judicial Magistrate or any Judicial Magistrate of District Mandi, HP.

13. The Court executing the personal and surety bonds shall ascertain the identity of the bail-petitioner, his family members, and of sureties, through AADHAR Card, Pan Card, Ration Card, etc. The petitioner shall mention phone numbers and other details, on the reverse page of the bonds.

14. The Counsel for the accused and the attesting official shall explain all conditions of this bail to the petitioner.

15. This Court is granting the bail, subject to the conditions mentioned herein. The petitioner/accused undertakes to comply with all directions given in this order, and the furnishing of bail bonds by the petitioner/accused is acceptance of all such conditions:

- (i) The petitioner shall appear before the Court which issues the summons or warrants, and shall furnish fresh bail bonds to the satisfaction of such Court, if such Court directs to do so.

- (ii) The petitioner undertakes to attend the trial.
- (iii) The petitioner shall join the investigation as and when called by the Investigating Officer. However, whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the accused shall not be called before 9 AM and shall be let off before 5 PM.
- (iv) The petitioner shall co-operate in the investigation.
- (v) The petitioner shall not hamper the investigation.
- (vi) The petitioner undertakes not to threaten or browbeat or use any pressure tactics on the victims, complainant, and witnesses.
- (vii) The petitioner shall neither influence nor try to control the investigating officer, in any manner whatsoever.
- (viii) 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 from disclosing such facts to the Court or any Police Officer or tamper with the evidence.
- (ix) In case the petitioner commits any offence prescribing the sentence of imprisonment of more than seven years, within thirty days of knowledge of such FIR, the petitioner shall intimate SHO of the present police station, with all the details of the present FIR as well as the new FIR. In such a situation, it

shall be open for the State to apply to this Court for cancellation of this bail, if it deems fit and proper. ◇

- (x) Within 30 days from today, the petitioner shall sell, or surrender, all firearms along with ammunition, and arms licenses, if any, to the authority which had given such permission.
- (xi) The petitioner shall not enter within a radius of five kilometers of the residence of both the victims, measuring from the shortest route, until the recording of the statements of all witnesses, except Police Officials, during trial. However irrespective of these conditions, the accused is permitted to visit his Lawyers, Courts and Hospitals. The petitioner shall inform the SHO of above-mentioned Police Station about the address where he would be residing. After the recording of the statements of the aforesaid witnesses, this condition shall automatically come to an end. In case of emergency, whenever, the accused is required to visit his home, then he shall take permission of the SHO/I.O. or any superior Officer of the concerned Police Station or of Pradhan/Up-Pradhan//Member of Panchayat, in whose jurisdiction, the residence of the victim, falls. But in no situation, he shall stay at this place for more than a week at a stretch. This condition is being laid so that no trauma is caused to the victim, at least till the time of recording of the statement of the victim in

Court. Such a condition is neither arbitrary nor unreasonable and the only purpose is that the victim is unable to come face to face with the accused and also has been imposed with a view that the accused is unable to influence the victim. In case the petitioner needs modification of this condition, then he may apply to this Court, supported with written permission from the victim, obtained through Pradhan, Up Pradhan, or Ward Member of the Panchayat, where the victim resides. ◇

16. In case the petitioner finds the bail condition(s) as violating fundamental or other right, or any human right, or faces any other difficulty due to any condition, then, the petitioner may file a reasoned application for modification of such term(s).

17. The present bail order is only for the FIR mentioned above. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the petitioner.

18. The SHO/Additional SHO of the concerned Police Station or the Investigating Officer to handover a copy of this order to the victim(s) and explain it to them.

19. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

20. Petition stands allowed in the terms mentioned above.

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(Anoop Chitkara)
Vacation Judge

24th January, 2020 (KS)

High Court of H.P.