

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.1534/2019

Reserved on : 23rd August, 2019

Date of Decision: 30th August, 2019

Pranav Verma

... Petitioner.

Versus

State of Himachal Pradesh

...Respondent

Coram:

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

Whether approved for reporting?¹ YES

For the Petitioner : Mr. Peeyush Verma, Advocate.

For the Respondent : Mr. Ashwani K. Sharma & Mr. Nand Lal Thakur, Additional Advocate Generals and Mr. Kuldeep Chand, Deputy Advocate General, for the State.

Anoop Chitkara, Judge

The petitioner, who is under arrest, on being arraigned as an accused in FIR number 139/2018 dated 25.11.2018, registered under Sections 376 of Indian the Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences

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

Act, 2012 (hereinafter referred to as 'the POCSO Act'), in the file of Police Station, (East) Chhota Shimla, District Shimla, 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. The status report stands filed. I have seen the status report(s) as well as the police file to the extent it was necessary for deciding the present petition, and the same stands returned to the police official.

FACTS:

3. The gist of the First Information Report and the investigation is as follows:

- a) That the victim, born on 15.8.2001, was admitted to Kamla Nehru Hospital, Shimla and on 24.11.2018. The hospital authorities informed Police Station (East) Shimla that the said victim had given birth to a baby and the age of the mother is 17 years. Consequently, the aforesaid FIR was registered.
- b) The police reached the hospital and after obtaining the Certificate of Fitness, her statement under Section 154 of the Code of Criminal Procedure, was recorded.

- c) She alleged that two years before, after Class-10, she had left the school and now she stays at home with her mother. Her parents are employees and they go to their official jobs daily. She has a younger brother, who also goes to school on regular basis.
- d) She further stated that in the building, where she was residing, a boy named Pranav also lived. In the year 2017, during Deepawali, she came to know the said Pranav (petitioner) who started coming to her home and she also used to go to his house. They started meeting each other. In the month of February, 2018, he called her to his house. Nobody was present at his home and on finding her alone, said Pranav established sexual relations with her. Thereafter, on various occasions, the accused established sexual relations with her, due to which, she became pregnant. She informed Pranav about her pregnancy, but because he takes drugs, he did not pay any heed to this. He left for his sister's home. After June/July, 2018, she was not in contact with him.
- e) She further stated that in the month of November, 2018, she had given birth to a baby boy.

4. I have heard Mr. Peeyush Verma, learned counsel for the petitioner and Mr. Ashwani K. Sharma, learned Additional Advocate General for the respondent/State.

REASONING:

- (a) In the statement recorded under Section 154 of the Code of Criminal Procedure, the victim although did not state specifically of putting up any resistance and the fact that if she was ravished on the first occasion, then why she continued having sexual relations with the accused.
- (b) Section 375(d) (sixthly), states that sexual intercourse, even with the consent of the girl, when she is under 18 years of age, amounts to rape. Similarly, Sections 4 and 6 of POCSO Act, deals with penetrative and aggravated sexual assaults. In POCSO Act, Section 2(d) states that the child means any child below the age of 18 years. Therefore, even although on the face of it, it seems to be a case of consent, but consent has to be pleaded and proved, which cannot be done so in this case, because of the age and even if it is so done, it would be statutory rape.
- (c) Despite the fact that the petitioner, who is a 23 years old boy, impregnated a child of 17 years, but it does not mean that there is no

power with this Court to grant bail. As per the allegations of the victim, when the petitioner called her to his home, none was present and then he established sexual intercourse with her and thereafter on numerous occasions they had coitus.

- (d) There was no justification for the victim to continue to establish sexual relations with the petitioner. Undoubtedly, she was a minor, but it was only in 2013, when by amendment of the Indian Penal Code, the age of consent was increased from 16 to 18 years. Whatever is the ultimate outcome of the allegations can not be commented at this stage. There is no provision in the Indian Penal Code or POCSO Act, which creates a total bar for grant of bail.
- (e) The petitioner is in judicial custody since 6.12.2018.
- (f) The investigation in the case is complete and no recovery is to be effected. Therefore, no purpose would be served to continue the judicial custody.
- (g) In the status report, there is no mention of previous criminal history of the bail petitioner.
- (h) The petitioner is a permanent resident of address mentioned in the memo of parties. Therefore, his presence can always be secured.

- (i) I am satisfied that no purpose will be served if the bail petitioner is continued in judicial custody.
- (j) I am of the considered view that, *prima facie*, petitioner has made out a case for grant of bail.

5. In the result, the present petition is allowed. The petitioner 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 Rs.10,000/- with one surety in the like amount to the satisfaction of the Sessions Judge, Shimla, District Shimla, H.P. and in case such Court is not available, then any Additional Sessions Judge of District Shimla, H.P.

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

- a) The petitioner shall neither influence nor try to control the investigating officer in any manner whatsoever.
- b) 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 tamper with the evidence.

- c) The petitioner undertakes not to contact the complainant and witnesses to threaten or browbeat them or to use any pressure tactics.
- d) Until the statements of the victim and other non official witnesses, are recorded, the petitioner/ accused shall not stay within a distance of 10 Kilometers radius from the house of the prosecutrix and also not within the municipal limits of Shimla town, even if, such municipal limits are beyond 10 Kilometers. Respondent shall send a copy of this order to S.H.O. Police Station, (East), Shimla. However, irrespective of these conditions, the petitioner is permitted to visit his Lawyers, Courts and Hospitals. The petitioner shall inform to 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.
- e) 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 Municipal Counciler of the concerned municipal area, in whose jurisdiction, the residence of the

victim, falls. But in no situation, he shall stay at this place for more than one day/24 hours at a time. 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.

- f) In case, the petitioner is arraigned as an accused of the commission of any offence, prescribing the sentence of imprisonment of ten years or more, then within thirty days of knowledge of such FIR, the petitioner shall intimate the SHO of the present police station, with all the details of the present FIR as well as the new FIR and it shall be open for the State to apply to this Court, for cancellation of this bail, if it deems fit and proper.
- g) The petitioner undertakes to attend the trial

7. At this stage, it shall be appropriate to make reference to a judicial precedent wherein a Co-ordinate Bench of this Court in Cr.MP(M) No.1875 of 2015, titled as ***Sagar Tomar vs. State of Himachal Pradesh***, decided on

31.12.2015 and Cr.MP(M) No.194 of 2018, titled as **Chaman Singh vs. State of Himachal Pradesh**, decided on 19.3.2018, had granted bails, when the victims were under 18 years of age and the offences were post 2013 amendment.

8. Reliance may also be placed on precedents of other High Courts wherein, on similar facts, bails were granted: (i) The High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, in Criminal Petition No.16790 of 2016, titled as **Korra Praveen Vs. State of Telangana**, decided on 15.12.2016; and (ii) The High Court of Gujarat at Ahmedabad in R/Criminal Misc. Application No.23962 of 2018, titled as **Harsul S/o Gambhirdan Banesingh Gadhavi Versus State of Gujarat**, decided on 16.1.2019.

9. In **Kunal Kumar Tiwari vs. State of Bihar**, 2017 AIR (SC) 5416, the Hon'ble Supreme Court had referred to Sub Clause (c) of Section 437(3) of the Code of Criminal Procedure and stated that conditions of bail cannot be arbitrary, fanciful and cannot extend beyond the ends of provisions. The Supreme Court held that the phrase

“interest of justice” as used under Sub Clause (c) of Section 437(3) means “good administration of justice”, or “advancing the trial process” and inclusion of broader meaning should be shunned because of purposive interpretation.

10. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the Petitioner.

11. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

Petition stands allowed in the aforesaid terms.

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(Anoop Chitkara)
Judge

30th August, 2019*(KS)*