

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ON THE 31st DAY OF DECEMBER 2021

BEFORE
HON'BLE MR. JUSTICE SANDEEP SHARMA

CRIMINAL MISC.PETITION (MAIN) No. 2392 of 2021

Between:

AMAR SINGH,
SON OF SH. GORKHA SINGH,
R/O VPO JUGHON, TEHSIL '
NALAGARH, DISTRICT SOLAN,
HIMACHAL PRADESH.

....PETITIONER

(BY SH. H.S.RANGRA, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH

....RESPONDENT

By MR. NARENDER THAKUR AND
MR. GAURAV SHARMA, DEPUTY
ADVOCATE GENERALS).

Whether approved for reporting?

This petition coming on for orders this day, the Court passed the following:

O R D E R

Bail petitioner namely, Amar Singh, who is behind the bars since 20.10.2021, has approached this Court in the instant proceedings filed under Section 439 of the Code of Criminal Procedure, praying therein for grant of regular bail in case FIR No. 327 of 2021, dated 19.10.2021, under Sections 363, 354, 376, 506 of

IPC and Sections 4 & 8 of the POCSO Act, registered at police Station, Nalagarh, District Solan, Himachal Pradesh.

2. Pursuant to order dated 17.12.2021, respondent-State has filed the status report and ASI Harjit has also come present alongwith the record. Record perused and returned.

3. Close scrutiny of the record/status report reveals that on 19.10.2021, complainant Gurcharan Singh, lodged a complaint at police Station, Nalagarh, District Solan, H.P., alleging therein that on 18.10.2021, at about 11:00 AM, while her minor daughter i.e. victim/prosecutrix (*name withheld to protect her identity*), was going towards field, bail petitioner Amar Singh alongwith one boy came there in a car bearing registration No.HP-12-H-8691 and forcibly made her daughter to sit in the car and ran away. He alleged that at the time of alleged incident, persons namely, Sanjeev Kumar, Ravi Kumar and Achhar Chand were also standing there and they also tried to stop the vehicle, but failed. He alleged that he after having came to know about the incident, went to the shop of father of the bail petitioner, who assured that his daughter would reach back home within one hour, but since she has not reached home, appropriate action, in accordance with, law be taken against the person namely, Amar Singh. After recording the aforesaid statement of the complainant, police started the investigation and recovered the victim/prosecutrix on 19.10.2021 from the car bearing registration No.HP-12-H-8691 near Baruna chowk while bail petitioner

and victim/prosecutrix were returning to their home. In the aforesaid background, FIR, as detailed hereinabove, came to be lodged against the bail petitioner and since 20.10.2021 he is behind the bars. After getting the victim/prosecutrix medically examined, police also got her statement recorded under Section 164 Cr.P.C. before the Judicial Magistrate, Nalagarh. Since challan stands filed in the competent court of law and nothing remains to be recovered from the bail petitioner, he has approached this Court in the instant proceedings for grant of regular bail.

4. Mr. Narender Thakur, learned Deputy Advocate General, while fairly acknowledging the factum with regard to filing of the challan in the competent court of law, contends that though nothing remains to be recovered from the bail petitioner, but keeping in view the gravity of offence alleged to have been committed by him, he does not deserve any leniency and as such, prayer made on his behalf for grant of bail may be rejected outrightly. While making this Court to peruse the status report/record, Mr. Thakur, made serious attempt to persuade this Court to agree with his contention that bail petitioner taking undue advantage of innocence and minority of the victim/prosecutrix, not only sexually assaulted her against her wishes, but also extended threats to her and as such, it may not be appropriate at this stage to enlarge him on bail because in the event of his being enlarged on bail, he may not only flee from justice, rather may also cause harm to the victim/prosecutrix.

5. Having heard learned counsel representing the parties and perused the material available on record, especially statement of the victim/prosecutrix recorded under Section 164 Cr.P.C, this Court finds that victim/prosecutrix aged 15 years had prior acquaintance with the bail petitioner and they had been talking with each other for quite some time. Victim/prosecutrix in her statement recorded under Section 164 Cr.P.C though stated that while she was going to her fields, bail petitioner made her to sit in the car by holding her arm but she has nowhere stated that she was sexually assaulted. She has simply stated that bail petitioner took her towards Naina Devi road and from there they went to Anandpur and when parents of the bail petitioner asked the bail petitioner about his whereabouts, bail petitioner and she decided to come back to house but while they were returning, police reached the spot and took them to the police Station, Nalagarh. Most importantly, in the aforesaid statement, prosecutrix has stated that parents of bail petitioner told that in case parents of the prosecutrix refused to keep the prosecutrix in her house they would keep her in their house.

6. As per status report bail petitioner taking undue advantage of innocence and minority of the victim/prosecutrix attempted to commit rape on her, but since victim/prosecutrix felt pain he only touched her private parts. However, as has been taken note hereinabove, victim/prosecutrix in her statement recorded under

section 164 Cr.P.C has not stated something specific with regard to sexual assault, if any, committed upon her by the present bail petitioner. Otherwise also, medical evidence adduced on record nowhere supports the case of the prosecution with regard to sexual assault. No doubt, at the time of alleged incident victim/prosecutrix was minor but having taken note of the fact that she was in constant touch with the bail petitioner and she of her own volition and without there being any external pressure had joined the company of the bail petitioner, this Court finds it difficult to agree with Mr. Narender Thakur, earned Deputy Advocate General that bail petitioner taking undue advantage of innocence and minority of the victim/prosecutrix attempted to sexually assault her against her wishes. Since, there is no allegation, if any, levelled by the victim/prosecutrix with regard to sexual assault, if any, committed upon her by the bail petitioner, this Court sees no reason to let the bail petitioner incarcerate in jail for indefinite period during the trial, especially when nothing remains to be recovered from the bail petitioner.

7. It has been repeatedly held by Hon'ble Apex Court as well as this Court in catena of cases that one is deemed to be innocent till the time his /her guilt is not proved, in accordance with law. In the case at hand, the guilt, if any, of the bail petitioner is yet to be proved, in accordance with law and as such, prayer having been made on his behalf deserves to be considered.

8. Though, Mr. Narender Thakur, learned Deputy Advocate General while inviting attention of this Court to the provisions contained under Section 8 of the POCSO Act, argued that no bail can be granted in the offence alleged to have been committed under the provision of POCSO Act, but mere insertion of Section 8 of the Act is not sufficient to conclude the complicity, if any, of the bail petitioner as far as commission of offence under section 8 of the POCSO Act because no allegation, if any, of sexual harassment has been levelled against the bail petitioner by the victim/prosecutrix.

9. Though, aforesaid aspects of the matter are to be considered and decided by the learned trial Court on the basis of totality of evidence to be collected on record by the investigating agency, but in the peculiar facts and circumstances of the case, as has been taken note hereinabove, this Court sees no reason to curtail the freedom of the bail petitioner for indefinite period during the trial, especially when nothing remains to be recovered from him. Apprehension expressed by learned Deputy Advocate General that in the event of bail petitioner being enlarged on bail, he may flee from justice or may again indulge in such activities, can be best met by putting bail petitioner to stringent conditions.

10. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018, *Dataram Singh vs. State of Uttar Pradesh & Anr.*, decided on 6.2.2018, has categorically held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning

thereby that a person is believed to be innocent until found guilty. Hon'ble Apex Court further held that while considering prayer for grant of bail, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Hon'ble Apex Court further held that if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case. The relevant paras of the aforesaid judgment are reproduced as under:

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

3. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.

4. While so introspecting, among the factors that need to be considered is whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence

witnesses. If the investigating officer does not find it necessary to arrest an accused person during investigations, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer. Surely, if an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimised, it would be a factor that a judge would need to consider in an appropriate case. It is also necessary for the judge to consider whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct. The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to [Section 436](#) of the Code of Criminal Procedure, 1973. An equally soft approach to incarceration has been taken by Parliament by inserting [Section 436A](#) in the Code of Criminal Procedure, 1973.

5. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of [Article 21](#) of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in *In Re-Inhuman Conditions in 1382 Prisons*

11. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation* (2012)1 Supreme Court Cases 49; held as under:-

" The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial

could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in

such cases, "necessity" is the operative test. In India , it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the propose of giving him a taste of imprisonment as a lesson."

12. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime.

13. The Hon'ble Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and Another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) *nature and gravity of the accusation;*
- (iii) *severity of the punishment in the event of conviction;*
- (iv) *danger of the accused absconding or fleeing, if released on bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.*

14. Consequently, in view of the above, present bail petition is allowed. Petitioner is ordered to be enlarged on bail subject to his furnishing personal bond in the sum of Rs. 50,000/- with one local surety in the like amount, to the satisfaction of the learned trial Court, with following conditions:

- a. *He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;*
- b. *He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;*
- c. *He shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the Court or the Police Officer; and*
- d. *He shall not leave the territory of India without the prior permission of the Court.*

15. It is clarified that if the petitioner misuses his liberty or violates any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

16. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this application alone.

The bail petition stands disposed of accordingly.

Dasti copy.

31st December, 2021
(shankar)

(Sandeep Sharma),
Judge