

**REPORTABLE/NON-REPORTABLE
IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 28th DAY OF JANUARY, 2022
BEFORE
HON'BLE MR. JUSTICE SATYEN VAIDYA
CRIMINAL MISC. PETITION (MAIN) NO. 147 OF 2022**

Between:-

**ASHOK KUMAR SON OF SH. ISHWAR DUTT,
AGED ABOUT 20 YEARS, RESIDENT OF
VILLAGE BHALUT, POST OFFICE LESUI,
TEHSIL CHURAH, DISTT. CHAMBA,
THROUGH HIS FATHER SH. ISHWAR DUTT
SON OF SH. JAI SINGH, AGED ABOUT 38 YEARS.**

....PETITIONER

(BY SH. KUL BHUSHAN, KHAJURIA, ADVOCATE.)

AND

THE STATE OF HIMACHAL PRADESH.

....RESPONDENT

**(BY SH. DINESH THAKUR, ADDL. A.G. WITH MR. MANOJ
BAGGA, ASSTT. A.G., FOR THE RESPONDENT.**

**SI JOGINDER SINGH, P.S. TISSA, DISTRICT CHAMBA,
PRESENT ALONGWITH RECORDS.**

**Reserved on : 27.01.2022
Date of decision: 28.01.2022.**

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

ORDER

Petitioner is an accused in case registered vide FIR
No. 161 of 2021, dated 10.12.2021, at Police Station, Tissa,
District Chamba, H.P. under Sections 354, 354D IPC and

Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO) Act. Petitioner is in custody since 11.12.2021.

2. Petitioner has prayed for grant of bail under Section 439 Cr.P.C., in the above noted case, on the grounds that he has been implicated in a false case. The investigation of the case is complete and nothing is to be recovered from him. There is no legal evidence to connect the petitioner with the alleged crime. Petitioner belongs to a respectable family and has roots in the society and, as such, there is no likelihood of his absconding from the course of justice. It has further been contended on behalf of the petitioner that he will abide by all the terms and conditions as may be imposed against him. Petitioner has undertaken not to tamper with the prosecution evidence and to extend any threat etc. to the witnesses or the persons acquainted with the facts of the case.

3. In response, the status report has been filed. It is stated that on 10.12.2021, complainant (mother of the victim), submitted a written complaint at Police Station alleging inter alia that her daughter (victim), is a minor aged about 15 years and is a student of 10th class. Petitioner

has been harassing the victim for the last about six months. On receipt of complaint from the victim in this regard, complainant had apprised the parents of the petitioner, whereafter petitioner had stopped chasing the victim. It was further alleged that on 9.12.2021, when the victim was returning from school at about 4.30 p.m., petitioner again followed the victim and caught her from arm and also indulged in indecent acts. When the victim reached home, she was weeping. On being asked about the reason for her distress, the victim disclosed about the aforesaid illegal activities. It was further alleged that petitioner on earlier occasion had taken a photograph of the victim from his mobile camera and had posted the same on face book. The victim was also being threatened by the petitioner. On such complaint, case under the aforesaid sections was registered. The investigation was carried out. The statement of victim under Section 164 Cr.P.C. was recorded. As per respondent, on interrogation, the petitioner disclosed that the victim had been chatting with him from the mobile of her mother since June, 2021. On further investigation, it is also stated to be discovered that the father of petitioner had destroyed and burnt the mobile set and SIM Card used by the petitioner on having attained the knowledge

about mis-deeds of the petitioner. The date of birth of the victim was 01.01.2007. The investigation has been completed and the challan has been prepared. Respondent has expressed apprehension that in case of release of petitioner on bail, he may overawe the victim and the witnesses. The bail application has been accordingly opposed.

4. I have heard learned counsel for the petitioner and learned Additional Advocate General for the State and have also gone through the status report as well as the police file.

5. The Court is not required to minutely scan the evidence collected by the Investigating Agency while adjudicating upon the bail application, still, the material collected by the Investigating Agency can be looked into in order to assess the gravity and seriousness of the allegations levelled against the bail petitioner.

6. The statement of victim was recorded under Section 164 Cr.P.C. wherein only general allegation of indecent behaviour of the petitioner was alleged. In absence of any specific allegation, the gravity of the alleged conduct of petitioner cannot be assessed. The allegations are yet to be proved against petitioner. Unless proved, the allegations cannot be presumed to be correct. The allegation that the

petitioner had used the medium of face book against the victim has not been substantiated during investigation. Further no attempt appears to have been made to verify the version of the petitioner that the mobile phone of the mother of the victim was used for the purpose of chatting with him since long.

7. Pre-trial incarceration cannot be ordered as a matter of rule. The trial against petitioner is likely to take considerable time before completion. No fruitful purpose shall be served by keeping the petitioner in custody till the conclusion of trial especially keeping in view his young age.

8. The petitioner is permanent resident of village Bhalut, Post Office Lesui, Tehsil Churah, District Chamba, H.P. There is no likelihood of his absconding from the course of justice. The apprehension expressed by the respondent that in case of his release on bail, the petitioner may overawe the victim and other witnesses, though vague, can still be taken care of by imposing appropriate conditions against the petitioner. No criminal history has been attributed to the petitioner.

9. In the peculiar facts and circumstances of the case, the application is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No. No. 161

of 2021, dated 10.12.2021, at Police Station, Tissa, District Chamba, H.P. under Sections 354, 354D of IPC and Section 12 of the POCSO Act, on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of learned Chief Judicial Magistrate, Chamba or in his absence, any other Judicial Magistrate First Class, on duty. This order is, however, subject to following conditions and it is clarified that in case of breach of any of the conditions, the respondent shall be at liberty to approach this Court for cancellation of the bail granted to the petitioner: -

- i) That the petitioner shall regularly attend the trial of the case before the learned Trial Court and shall not cause any delay in its conclusion.
- ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.
- iii) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.
- iv) That the petitioner shall not leave the territory of India without express leave of the Trial Court during the Trial.

10. Any observation made in this order 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 hereinabove.

28th January, 2022.
(GR)

(Satyen Vaidya)
Vacation Judge