IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 1988 of 2020
Reserved on: 14.12.2020
Decided on: 15.12.2020

Hindi Lal ....Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram
The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.
Whether approved for reporting?[1] Yes

For the petitioner: Mr. Yashveer Singh Rathore, Advocate.

For the respondent-State: Mr. S.C. Sharma, Additional Advocate General.

Chander Bhusan Barowalia, Judge. *(oral).*

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. 107 of 2018, dated 16.11.2018, under Section 376 of IPC and Section 4 of POSCO Act, registered in Police Station Chirgaon, 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. He is permanent resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice.

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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. The prosecution story, as emanates from the records, is that on 16.11.2018, prosecutrix (name withheld), aged 16 years, got her statement recorded under Section 154 Cr.P.C. with WC Sneh Lata No.1005, in the presence of her mother Leelpati. She has stated that they are four brothers and sisters and she is the eldest of them. Her father has expired four years back and her mother takes care of them by working as a labourer. In the month of August, 2018, (date not known) when she was alone at home, petitioner, Hindi Lal, her neighbourer, came to her house and assaulted her sexually. When she retaliated, he gagged her mouth with Thatu and threatened her to set her house on fire, if she would disclose this fact to her mother. Thereafter, due to fear, she did not disclose anything to her mother and now she is carrying pregnancy of three-four months. Upon the statement, so made by the prosecutrix, police registered a case and the investigation ensued. The prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was got recorded. On 18.11.2018, Hindi Lal, the present petitioner, was arrested and also medically examined. Police prepared the spot map and recorded the statements of the witnesses. On 25.11.2018, at night, prosecutrix gave birth to a girl, who could not survive for long and died on 26.11.2018. As per police, after completion of investigation, challan

stands presented in the learned Trial Court. As per SFSL report, prosecutrix and the petitioner were the mother and father of the infant. Lastly, it is prayed that the bail application of the petitioner be dismissed, as he has committed a serious offence and there is anger in the society against him and there is possibility that in case, at this stage, he is enlarged on bail, he may flee from justice or tamper with the prosecution witnesses.

5. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, 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. He has 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 learned Trial Court and custody of the petitioner is not at all required by the police, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, learned Additional Advocate General has argued that the petitioner was found involved in a serious offence. He has further argued that in case the petitioner is enlarged on bail, at this stage, he may flee from justice or tamper with the prosecution

evidence. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is behind the bars for the last more than two years and cannot be kept there for an unlimited period, especially when investigation is complete, challan stands presented in the learned Trial Court and the fact that custody of the petitioner is not at all required by the police, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the fact that investigation in the case is complete, challan stands presented in the learned Trial Court, custody of the petitioner is not at all required by the police, also the fact that he is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the fact that the petitioner cannot be kept behind the bars for an unlimited period, especially, when investigation in the matter is complete and nothing remains to be recovered at the instance of the petitioner and also the fact that the petitioner is ready and willing to abide by the terms and conditions of the bail, in case granted. Considering the overall material, which has come on record, and without discussing the same, at this stage, 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 his favour. Accordingly, the petition is allowed and it is ordered that

the petitioner, who has been arrested by the police in case FIR No. 107 of 2018, dated 16.11.2018, under Section 376 of IPC and Section 4 of POSCO Act, registered in Police Station Chirgaon, District Shimla, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of Rs.50,000/- (rupees fifty 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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(Chander Bhusan Barowalia)
Judge

December 15, 2020
(R.Atal)