IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No. 2169 of 2020

Date of Decision 24th Dec.,2020

Shamsher @ Babu ***…Petitioner***

Versus

State of H.P. ***….Respondent***

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, J.

Whether approved for reporting?[1]

For the Petitioner:	Mr. Vinod Chauhan, Advocate, through Video Conferencing.
For the Respondent:	Mr. Raju Ram Rahi, Deputy Advocate General, through Video Conferencing.

Vivek Singh Thakur, J.

Petitioner has preferred this petition, under Section 439 Cr.P.C., seeking regular bail in case FIR No. 9 of 2018, dated 21.02.2018, registered under Sections 363, 366, 376 of IPC and Section 4 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act') in Women Police Station Baddi, District Solan H.P.

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

2 Status report stands filed wherein it is stated that on the basis of complaint lodged by father of victim, police had swung into action and victim was recovered on 27.02.2018 from petitioner from his native place i.e. village Amba Tand, P.O. SP Kolyari, P.S. Giridih, Jharkhand and for commission of non-bailable offences, petitioner was arrested.

3 Since then, petitioner is in judicial custody and is facing the trial. Learned counsel for petitioner submits that as of now, statements of victim as well as doctor, who had examined the victim, have been recorded and the doctor, in her cross examination, has stated that she could not say with certainty that sexual intercourse had taken place.

4. Further that victim has also stated that during the period from 20.2.2018 to 27.2.2018 when victim was accompanying the petitioner at various places like Delhi, Madhupur (Jharkhand) and village Amba Tand etc. petitioner had not violated her person and therefore, at this stage, petitioner is entitled for bail.

5 Learned Deputy Advocate General submits that victim, in her statement, has categorically stated that in the month of December, 2017, accused once subjected her to forcible intercourse during day time at a place near bridge on

way to school, but, she did not disclose this fact as accused had asked her not to disclose and in cross examination also, she has categorically denied the suggestion that no such act was committed by accused with her in December, 2017. Learned Deputy Advocate General further submits that person of victim was violated in December, 2017, whereas, she has been subjected to medical examination in the month of February, 2018 and therefore, acceptance of suggestion by doctor, that she could not say with certainty as to whether sexual intercourse had taken place, is of no consequence.

6 Learned Deputy Advocate General further submits that keeping in view the age of victim at the time of commission of offence which was about 11 years and the fact that she was studying in 6th class only, the petitioner for committing the heinous crime punishable under the Protection of Children from Sexual Offences Act, 2012 is not entitled for bail at this stage particularly when trial is at an advance stage.

7 Without commenting upon the merits of case and without evaluating the statements of witnesses placed on record, considering rival contentions of parties along with facts and circumstances of the case, I am of the considered opinion that

petitioner is not entitled for bail in present case at this stage. Accordingly petition is dismissed.

December 24,2020 **(Vivek Singh Thakur)**
(ms) **Judge**