IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No.2416 /2024.
Date of Decision: 20th December, 2024.

Soyav Khan .....Petitioner.

Versus

State of Himachal Pradesh .....Respondent.

Coram
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.
Whether approved for reporting?[1]

For the Petitioner: Mr. Kush Sharma, Advocate.

For the Respondent: Mr. R.K. Negi, Additional Advocate General.

ASI Rameshwar Singh, PS Paonta Sahib, District Sirmaur, HP is present in person.

Bipin Chander Negi, Judge *(oral).*

The present bail petition has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) for grant of regular bail. The same arises out of FIR No.144 of 2024, dated 27.09.2024, registered at Police Station Paonta Sahib, District Sirmour, HP under Section 65(1) of BNS and Section 6 of POCSO Act.

2. Heard counsel for the parties and perused the status report.

3. Brief facts giving rise to the present case are that the FIR, in the case at hand, has been registered at the behest of the father of the victim. The father of victim works in a private capacity in a factory. He is stated to

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

have three children. Out of the three children, two are daughters and one son. The elder daughter studies in Class-X and the younger daughter studies in Class-VIII.

4. On 25.09.2024, when father of the alleged victim had gone to work at the factory, then during the day time his wife had called and informed him that his daughter on the said day had not gone to the school and had gone elsewhere. The wife of the informant had enquired about the victim i.e. their daughter in the neighbourhood. At about 3:30 PM, the alleged victim had returned to home. In the evening on 25.09.2024, the informant had enquired from the daughter of her whereabouts on 25.09.2024 and why she had not attended the school on the said day. The alleged victim had kept quiet.

5. On 27.09.2024, when the informant once again enquired from his daughter about her whereabouts on 25.09.2024, it is then she informed that the bail petitioner had taken her on a motorcycle. The victim had alleged that the bail petitioner had picked her from near house at about 11:00 AM. Thereafter, he had taken to her in a hotel in Badripur, wherein he had indulged in sexual acts with her.

6. In the aforesaid facts and attending circumstances, FIR No.144 of 2024, dated 27.09.2024 was got registered at Police Station Paonta Sahib, District Sirmaur, HP under Section 65(1) of BNS and Section 6 of POCSO Act.

7. Investigation, in the case at hand, is complete and the challan stands filed before the competent Court on 23.11.2024. However, in the status report it is submitted that a supplementary challan will be filed with respect to SFSL Report to be received from Junga qua the contents of the mobile phone of the present bail petitioner. It is alleged that in the mobile phone of the bail petitioner there exist obscene photographs, insofar as the child victim is concerned.

8. The statement of the victim was recorded under Section 183 of the BNSS. A perusal whereof categorically reflects that the victim has categorically stated that no sexual act was indulged in by the bail petitioner with her on 25.09.2024.

9. Other than the aforesaid, from a perusal of the status report, it is evident that medical report insofar as it pertains to any sexual act having been indulged inter se the alleged victim and the bail petitioner is in the negative. At this stage, a detailed evaluation of the evidence need

not be done, as the same can cause prejudice to either side. Since 30.08.2024 the bail petitioner is in custody.

10. Personal liberty is a very precious fundamental right. The same is to be curtailed only when it becomes imperative, according to the peculiar facts and circumstances of each case.

11. The object of bail is to secure the attendance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative.

12. The consequences of pre-trial incarceration are grave. A person presumed innocent is subjected to psychological and physical deprivations of jail. Further, a jailed individual is prevented from contributing to the preparation of his defence. The burden of his detention falls heavily on the innocent members of his family.

13. Nothing unfavourable has been stated in the status report qua the social circumstances of the petitioner whereby it can be made out that the petitioner is likely to betray the confidence, that the Court may place in him to turn out to take justice at the hands of the Court.

14. Petitioner is permanent resident of Village Tokka Nagla, PO Jamniwala, Tehsil Paonta Sahib, District Sirmour, HP. The respondent/State has not expressed any

apprehension regarding him fleeing from the justice and adversely affecting the trial. In any case, the petitioner can be put to terms for the purposes of safe, secure and unobstructed completion of trial.

15. Hence, after going through the material available on record and considering the overall facts and circumstances of the case, this Court finds that the present is a fit case where judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the bail application is allowed and it is ordered that the petitioner, who has been arrested by the police, in case FIR No.144 of 2024, dated 27.09.2024, registered at Police Station Paonta Sahib, District Sirmaur, HP under Section 65(1) of BNS and Section 6 of POCSO Act, shall be forthwith released on bail, subject to his furnishing personal bond to the tune of Rs.50,000/- (Rupees fifty thousand) with one local surety in the like amount, to the satisfaction of learned trial Court. This bail order is subject, however, to the following conditions:-

(i) Petitioner shall 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;

(ii) Petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever;

(iii) Petitioner will not leave India without prior permission of the Court;

(iv) Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the victim and Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;

(v) Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, Email, PAN Card, Bank Account Number, if any; &

(vi) It is made clear that in case petitioner is arraigned as an accused, in future, in any FIR, then his bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard.

16. Needless to say that the Investigating agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions are violated by the petitioner.

17. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

18. The Registry is directed to forward a soft copy of the bail order to the Superintendent, Central Jail Nahan, District Sirmour, H.P., through email, with a direction to enter the date of grant of bail in the e-prison software.

19. In case, the petitioner is not released within a period of seven days from the date of grant of bail, the

Superintendent, Central Jail Nahan, District Sirmour, H.P., is directed to inform this fact to the Secretary, DLSA, Sirmour. The Superintendent, Central Jail Nahan, District Sirmour, H.P., is further directed that if the petitioner fails to furnish the bail bonds, as per the order passed by this Court, within a period of one month from today, the said fact be submitted to this Court.

20. The petition stands accordingly disposed of. A copy of this order be sent to the Superintendent, Central Jail Nahan, District Sirmour, H.P. and the learned trial Court by FASTER.

21. A downloaded copy of this order shall be accepted by the learned Trial Court while accepting the bail bonds from the petitioner and in case, said Court intends to ascertain the veracity of the downloaded copy of the order presented to it, same may be ascertained from the official website of this Court.

(Bipin Chander Negi)
Judge

20th December, 2024
(Gaurav Rawat)

KALYAN SINGH TANTA

Digitally signed by KALYAN SINGH TANTA
DN: C=IN, O=HIGH COURT OF HIMACHAL PRADESH, OU=HIGH COURT OF HIMACHAL PRADESH SHIMLA, Phone=6369e2248161509 50e4e573e4e34d1a10ba376e1f8f8ee29dacc0d935a099c06, PostalCode=171001, S=Himachal Pradesh, SERIALNUMBER=d7f9b938be1296b50deba92fd93c409a194151aefd5316a9735ca7a14b704bd8, CN=KALYAN SINGH TANTA
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