



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 29th DAY OF MARCH, 2022

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CRIMINAL MISC. PETITION (MAIN) No. 2396 of 2021

Between:-

**BHARAT RAWAT S/O SHRI DHAN
BHADUR R/O VILLAGE JAJARKOT & PO
BARIKOT, TEHSIL NAIKBADA & DISTT.
JAJARKOT, NEPAL.**

...PETITIONER

**(BY SH. YASHVEER SINGH RATHORE
& AJEET SHARMA, ADVOCATES.)**

AND

STATE OF HIMACHAL PRADESH.

...RESPONDENT

**(BY SH. HEMANT VAID, ADDITIONAL
ADVOCATE GENERAL.)**

**(ASI DEEPAK KUMAR, POLICE STATION ROHRU
PRESENT IN PERSON ALONG WITH RECORD.)**

Whether approved for reporting?

Reserved on: 22.3.2022

Decided on: 29.3.2022

This petition coming on for pronouncement this day, the Court delivered the following:

ORDER

Petitioner has approached this Court seeking bail in case FIR No. 131 of 2018, dated 29.9.2018, registered in Police Station Rohru, District Shimla, H.P. under Sections 363, 366A, 376 and 506 of the Indian Penal Code (for short 'IPC') and Sections 4 and 6 of Protection of Children from Sexual Offence Act (for short 'POCSO Act').

2. Status report stands filed and record was also made available. As per prosecution case, on 29.9.2018, Hari Lal father of victim had lodged missing report of his 12 years old daughter, suspecting her kidnapping by one Bimal, whereupon FIR under Sections 363 and 366 IPC was registered and

investigation initiated. On receiving information from the sources, on 10.2.2019, Kiosk of petitioner was raided and victim and petitioner were found there residing together. On the basis of statement of victim and other evidence on record including medical report, Section 376 IPC as well as Sections 4 and 6 of POSCO Act were also incorporated. Petitioner was arrested on 11.2.2019 and after remaining in Police custody till 15.2.2019, he is in judicial custody since 16.2.2019. It has also been stated in the status report that as per information gathered by the Police, complainant and his family, after registration of FIR in present case are not traceable, who are citizens of Nepal as they have returned to Nepal whose address is not known to anyone including Yash Pal, landlord of family of complainant.

3. It has been advocated on behalf of petitioner that in present case first three witnesses including complainant Hari Lal and his victim daughter are key witnesses to the prosecution case, but despite fixing dates by the trial court for number of times and issuance of summons for their appearance, these witnesses are not appearing and every time it is reported by the Serving Agency/Police that their whereabouts are not traceable and further that on 30.12.2021 as a last resort notice was issued by the trial Court to SHO of Police Station concerned, directing him to produce PWs 1 to 3 before trial Court on next date i.e. 27.1.2022. It has been submitted on behalf of petitioner that on 27.1.2022 also PWs 1 to 3 were not present but again 29.3.2022 has been fixed for recording evidence of PW-1 to PW-3, despite the fact that on previous date last opportunity was granted to the prosecution. It has been further stated that during last three years, out of 21 witnesses, only 7 witnesses have been examined and that complainant and his victim daughter are not turning up.

4. Learned Additional Advocate General was directed to verify the facts. Under instructions, he has submitted that process was issued for production of PWs 1 to 3 for nine times i.e. for 22.10.2019, 23.12.2019, 4.3.2021, 14.7.2021, 2.9.2021, 29.10.2021, 10.12.2021, 30.12.2021 and 28.1.2022, but they are not traceable. Now case has been fixed on 29.3.2022 for recording evidence of PWs-1 to 3, but it has been stated that this time also these witnesses, which include victim and her family, have not been served, being not traceable for want of their present address. It has been contended on behalf of State that co-accused Bimal is absconding and petitioner is also resident of Nepal and, therefore, there would be every likelihood of his fleeing from justice and, therefore, he does not deserve to be enlarged on bail.

5. Learned counsel for the petitioner has submitted that though petitioner is resident of Nepal, however, have roots in the society in Himachal Pradesh and is residing there since long and is ready to furnish local surety also for ensuring his presence during trial or otherwise as and when directed by the Court.

6. Taking into consideration the factors and parameters required to be considered for adjudication of the bail application, as propounded in various pronouncements of the Supreme Court and facts and circumstances of the present case, I am of the considered opinion that petitioner deserves to be enlarged on bail.

7. Accordingly, petitioner is ordered to be enlarged on bail on furnishing personal bond in the sum of ₹50,000/- with two local sureties in the like amount, as undertaken by the petitioner, to the satisfaction of trial Court within two weeks from today and upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure presence of the petitioner at the time of trial:-

- (i) That the petitioner shall join the investigation and attend the Court as and when directed to do so by the Investigating Agency/Court;
- (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 so as to dissuade him/her from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) that the petitioner shall not obstruct the smooth progress of the investigation/trial;
- (iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;
- (v) that the petitioner shall not misuse his liberty in any manner;
- (vi) that the petitioner shall not jump over the bail;
- (vii) that he shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial;
- (viii) he shall not leave India without permission of the Court.

8. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner, enlarged on bail, as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

9. In case the petitioner violates any conditions imposed upon her, her bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

10. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

11. Observations made in this petition hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

12. The petitioner is permitted to produce copy of order downloaded from the High Court website and trial Court shall not insist for certified copy of the order, however, he may verify the order from the High Court website or otherwise.

The petition stands disposed of in the aforesaid terms.

29th March, 2022
(Keshav)

(Vivek Singh Thakur),
Judge.