



REPORTABLE/NON-REPORTABLE

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 10TH DAY OF AUGUST, 2022

BEFORE

HON'BLE MR. JUSTICE SATYEN VAIDYA.

CRIMINAL MISC.PETITION (MAIN) No. 1437 of 2022

Between:-

PRATAP

...PETITIONER

(BY SH. MANOJ PATHAK, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH

....RESPONDENT.

(BY SH. KUNAL THAKUR,
DEPUTY ADVOCATE GENERAL)

RESERVED ON: 05.08.2022.
DECIDED ON : 10.08.2022.

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

ORDER

Petitioner is accused in case registered vide FIR No. 24 of 2022 dated 16.04.2022 at Police Station, Nirmand,

District Kullu, H.P. under Sections 363, 366A, 376 of IPC and Section 4 of the POCSO Act, 2012.

2. The case has been registered against the petitioner on the basis of written complaint dated 16.04.2022 filed by the complainant Sh. Nanak Chand alleging *inter alia* that his grand-daughter (victim) was not traceable since 11.04.2022 and as per the information with the family, she has been kidnapped by the petitioner. After registration of FIR, investigation was initiated. It was found that the date of birth of victim was 10.11.2005. She was recovered from the house of petitioner. Her initial statement under Section 161 Cr.P.C. was recorded. Subsequently, the statement of the victim under Section 164 Cr.P.C. was also recorded before the learned Judicial Magistrate First Class. Her medical examination was conducted. On 9.5.2022 the victim was subjected to ultra-sonography in which it was found that she was pregnant by six weeks. On completion of investigation, the challan has been presented before the learned Special Judge, Rampur on 26.05.2022. The age of the petitioner was verified as 21 years.

3. Petitioner has prayed for grant of bail, in the above noted case, under Section 439 of the Code of Criminal Procedure (for short 'Code') on the ground that he is innocent. ◇
He is permanent resident of village Thaddhar, P.O. Sargha, Tehsil Nirmand, District Kullu, H.P. and there is no likelihood of his fleeing from the course of justice. Petitioner has undertaken to abide by all the conditions as may be imposed.

4. In response, respondent has placed on record status report. As per the case of respondent, on 11.04.2022 petitioner kidnapped the victim and committed rape on her. It is alleged that the victim was recovered from the house of the petitioner. Petitioner was fully aware of the fact that the victim was below 18 years of age.

5. I have heard Mr. Manoj Pathak, learned counsel for the petitioner and Mr. Kunal Thakur, learned Deputy Advocate General for the respondent and have also perused the contents of the status report.

6. Hon'ble Supreme Court in **Cr. Appeal No. 1391 of 2022** (Arising out of SLP (Crl.) No. 9317 of 2021) titled **X (Minor) vs. The State of Jharkhand and another**, decided

on 21.02.2022 refused to accept 'love affair' as relevant consideration for grant of bail in POCSO offences keeping in view the age of victim in that case which was only 13 years. ◇

7. The facts of instant case divulge that at the time of alleged offence victim was 16 years 5 months old and the petitioner was 21 years old. Victim was recovered from the home of petitioner and is inhabited by other members of the family of petitioner including his parents. Victim has nowhere alleged that petitioner had used force or deceit or any other alike means to take her to his home. All these facts have been noticed only to assess gravity and seriousness of allegations against the petitioner.

8. POCSO Act (for short 'Act') does not impose any special prohibition for grant of bail in offence(s) committed under the Act. Rather, Section 31 thereof makes provisions of Code of Criminal Procedure including provisions as to bail and bonds applicable to the proceedings therein.

9. Petitioner is in custody since 17.04.2022. The trial is going to take time before conclusion. The charges against petitioner are yet to be proved. Pre-trial incarceration is not

the rule. No past criminal history has been attributed to the petitioner. Further detention of petitioner in judicial custody will not serve any fruitful purpose, rather may prove prejudicial to the rights of petitioner, who also is in early and career building years of his life.

10. Petitioner is permanent resident of Village Thaddhar, P.O. Sargha, Tehsil Nirmand, District Kullu, H.P. and respondent state has not expressed any apprehension regarding his fleeing from course of justice and adversely affecting the trial. In any case petitioner can be put to terms for the purposes of safe, secure and unobstructed completion of trial.

11. 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. 24 of 2022 dated 16.04.2022 at Police Station, Nirmand, District Kullu, H.P. under Sections 363, 366A, 376 IPC and Section 4 of the POCSO Act, on his furnishing personal bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) with one surety in the like

amount to the satisfaction of learned Special Judge (POCSO),
Kinnaur at Rampur, H.P. subject to the following conditions:

- (i) Petitioner shall regularly attend the trial of the case before the learned Trial Court and shall not intentionally cause any delay in its conclusion.
- (ii) Petitioner shall not in any manner tamper with the prosecution evidence and shall not dissuade any person acquainted with the facts of the case from disclosing the same in the Court.
- (iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.
- (iv) That the petitioner shall not leave the territory of India without express leave of the Trial Court till completion of the trial.

12. Any observation made hereinabove 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. The petition is disposed of accordingly.

August 10, 2022.
(GR)

(Satyen Vaidya)
Judge