

**2023 STPL(Web) 30 HP
HIGH COURT OF HIMACHAL PRADESH**

(HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.)

SUNIL KUMAR @ BOBBY

Petitioner

VERSUS

STATE OF HIMACHAL PRADESH

Respondent

Cr.MP(M) No. 1521 of 2023-Decided on 14.07.2023

Criminal, Bail, Rape

Code of Criminal Procedure, 1974 – Indian Penal Code, 1860 – Section 376(AB) - The Protection of Children from Sexual Offences Act, 2012 – Section 75 - Bail – Rape – Rape with minor – Held: The very foundation of the case of the prosecution against the petitioner demonstrates that the allegations against the petitioner are grave and heinous. Whether or not the petitioner is guilty of the alleged offences is of course a matter of trial but at this stage, taking into consideration the gravity of the offences alleged to have been committed by the petitioner and the stage at which the trial is, no case is made out to release the petitioner on bail. The Court concurs with the submission made by learned Deputy Advocate General that if released on bail, there is each and every possibility that the petitioner may try to win over and coerce the prosecution witnesses, which may adversely affect the course of trial and further the release of the petitioner at this stage will be highly intimidating to the victim and her family. Bail rejected.

(Para 6)

Advocate(s): For the petitioner : Mr. D.N. Sharma, Advocate.

For the respondent : Mr. Navlesh Verma, Additional Advocate Generals, with Mr. Sidharth Jalta, Deputy Advocate General. HC Sanjay, IO PS Theog, District Shimla, H.P. present with case record.

JUDGMENT

Ajay Mohan Goel, Judge (Oral)-By way of this petition, filed under Section 439 of the Criminal Procedure Code, the petitioner has prayed for grant of regular bail, in FIR No.77 of 2021, dated 04.05.2021, registered under Sections 376(AB) of the Indian Penal Code and Section 6(m) and 17 of POCSO Act and Section 75 of Juvenile Justice Act, at Police Station Theog, District Shimla, H.P.

2. Learned Counsel for the petitioner has argued that the petitioner is innocent and has been falsely implicated by the complainant in the case. He has submitted that the investigation which has been carried out by the Police has not been able to connect the petitioner with the commission of the offences alleged and further the trial which has so far progressed has also not pointed out towards the culpability of the petitioner. He has submitted that the petitioner has not committed any offence so as to render him liable to be convicted either under the provisions of the Indian Penal Code or the POCSO Act read with the provisions of Juvenile Justice Act and therefore, the present petition be allowed by ordering the release of the petitioner on bail.

3. The petition is resisted by learned Deputy Advocate General inter alia on the ground that the allegations which have been levelled against the petitioner are grave and heinous and further as presently the stage of the trial is that the statements of prosecution witnesses are being recorded, therefore, release

of the petitioner at this stage would cause serious prejudice to the trial itself. He has further submitted that herein the allegation against the petitioner is of having physically molested a 7 years old girl and in these circumstances, if the petitioner is ordered to be released on bail, it will be highly intimidating to the young girl also. Learned Deputy Advocate General has further submitted that a similar petition filed by the petitioner in the Court of learned Additional Sessions Judge, Fast Track Special Court (POCSO), Shimla, H.P. has been rejected vide order dated 11.05.2023, copy whereof is annexed with the petition as Annexure P-6 and the petitioner has not been able to point out any change in the circumstances so as to warrant interference by this Court under Section 439 of Cr.P.C. for the grant of bail. Accordingly, he has prayed that since there is no merit in the present petition, the same be dismissed.

4. I have heard learned Counsel for the petitioner as well as learned Deputy Advocate General and also gone through the averments made in the petition as well as documents appended therewith as also the status report.

5. The allegations which have been levelled against the petitioner have already been enumerated by me hereinabove. In short, the case against the petitioner is that a complaint was filed on 04.05.2021 by the father of the child victim inter alia stating therein that he was married to co-accused Seema Verma and they were blessed with a daughter (victim in the present case) about 8 years back as from the date of lodging of the present complaint. On account of a matrimonial discord, he and his wife started living separately. Their daughter also started residing with her mother. A telephonic call was received by the complainant from his brother-in-law, i.e. maternal uncle of the victim, on 03.05.2021 that the victim had been beaten up and she was at his house i.e. at the house of maternal uncle of the child. On this, the complainant rushed to his brother-in-law's house and brought his daughter to his village Chamech. While changing her clothes, the complainant noticed various injury marks on the body of the victim so he took the victim to the hospital, where the Medical Officer opined that the victim was not only beaten up but was also raped. The victim on inquiry also disclosed that she was beaten up by one "Bobby Bhaiya", i.e. present petitioner, who also raped her. It was on these bases that the FIR was lodged against the petitioner.

6. The very foundation of the case of the prosecution against the petitioner demonstrates that the allegations against the petitioner are grave and heinous. Whether or not the petitioner is guilty of the alleged offences is of course a matter of trial but at this stage, taking into consideration the gravity of the offences alleged to have been committed by the petitioner and the stage at which the trial is, no case is made out to release the petitioner on bail. The Court concurs with the submission made by learned Deputy Advocate General that if released on bail, there is each and every possibility that the petitioner may try to win over and coerce the prosecution witnesses, which may adversely affect the course of trial and further the release of the petitioner at this stage will be highly intimidating to the victim and her family.

7. Accordingly, in view of above discussion, as this Court does not find any merit in this petition, the same is dismissed.
