



REPORTABLE/NON-REPORTABLE
IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 16th DAY OF NOVEMBER, 2022

BEFORE

HON'BLE MR. JUSTICE SATYEN VAIDYA

CRIMINAL MISC. PETITION (MAIN) NO. 2044 OF 2022 AND
CRIMINAL MISC. PETITION (MAIN) No. 2045 OF 2022.

Between:-

DINESH KUMAR SHARMA @ BITTU,
AGE 36 YEARS, S/O SHRI GURDEV SINGH,
R/O HOUSE NO. 57 WARD NO.11, SHANTI COLONY,
DEVI NAGAR, TEHSIL PAONTA SAHIB,
DISTRICT SIRMOUR, H.P

....PETITIONER

(BY SH. RAHUL SINGH VERMA, ADVOCATE).

AND

STATE OF HIMACHAL PRADESH

....RESPONDENT

(SH. NARENDER THAKUR,
DEPUTY ADVOCATE GENERAL)

2. Cr.MP(M) NO. 2045 OF 2022.

Between:

AMIR KHAN, AGE 29 YEARS, S/O SHRI TEG
MOHAMMAD @ NAJAKAT ALI, R/O
VILLAGE KUNDION, POST OFFICE JAMNIWALA,
TEHSIL PAONTA SAHIB, DISTRICT SIRMOUR, H.P.

...PETITIONER

(BY. SH. RAHUL SINGH VERMA, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH

.... RESPONDENT

(BY SH. NARENDER THAKUR,
DEPUTY ADVOCATE GENERAL)

RESERVED ON : 15.11.2022

DECIDED ON : 16.11.2022.

These petitions coming on for pronouncement of judgment this day, the Court passed the following:

ORDER

Both these petitions are being decided by a common order as these arise out of the same FIR and also involve common questions of facts and law.

2. Petitioners vide their separate petitions have prayed for grant of bail in case FIR No.109 of 2022, dated 31.05.2022 registered at Police Station, Paonta Sahib, District Sirmour, H.P., under Sections 376-DA and 506 of Indian Penal Code (for short "IPC") and Section 6 of the Protection of Children from Sexual Offences (for short "POCSO") Act, 2012.

3. The investigation in the case is complete and the challan has been presented in the Court on 06.08.2022. The prosecution case is that on 24.05.2022, petitioner Amir Khan in Cr.M.P.(M) No. 2045 of 2022 forcibly committed sexual intercourse with the victim more than once and then few hours thereafter petitioner Dinesh Kumar alias Bittu in Cr.M.P.(M) No. 2044 of 2022

committed the same offence with the victim. Both the petitioners were employees of Chaudhary Hospital, Paonta Sahib and the victim was working as domestic helper in the house of owner of Chaudhary Hospital. The allegation against the petitioners is that they committed the offence with the victim under threat. The victim could not disclose the commission of offence by petitioners to anyone under fear. On 30.05.2022 the victim felt giddy and also started vomiting. She was noticed by the daughter of owner of Chaudhary Hospital, who asked the victim as to what had happened and the victim had disclosed the misdeeds of the petitioners to her. She then further informed the parents of the victim, who alongwith victim reported the matter to the police on 31.05.2022.

4. Petitioners were arrested on 03.06.2022. They remained in police custody till 06.06.2022 whereafter, they are in judicial custody.

5. As per status report filed on behalf of the respondent, the date of birth of victim is 03.08.2008.

6. Petitioners have prayed for grant of bail on the grounds that they are innocent and have been falsely

implicated. It is submitted on their behalf that the delay in lodging the FIR is suggestive of falsity of allegation. The offence is alleged to have been committed in the house of owner of Chaudhary Hospital and it is not a case that none other was present in the premises at the relevant time. Had the case been truthful, the victim would have raised hue and cry and reported the matter to someone. It is further submitted that the medical evidence collected by the police does not support the prosecution version. The petitioners are stated to be permanent resident of State of Himachal Pradesh. It is submitted that there is no apprehension of their fleeing from course of justice. Petitioners have undertaken to abide by all the terms and conditions as may be imposed against them.

7. I have heard learned counsel for the petitioner and learned Deputy Advocate General for the State and have gone through the records of the case.

8. In **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another (2010) 14 SCC 496**, Hon'ble Apex Court has culled out the factors to be borne in mind while considering an application for bail as under:-

- “9.....(i) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) *nature and gravity of the accusation;*
- (iii) *severity of the punishment in the event of conviction;*
- (iv) *danger of the accused absconding or fleeing, if released on bail;*
- (v) *character, behaviour, means, position and standing of the accused;*
- (vi) *likelihood of the offence being repeated;*
- (vii) *reasonable apprehension of the witnesses being influenced; and*
- (viii) *danger, of course, of justice being thwarted by grant of bail.”*

9. The victim as per the prosecution version was born on 03.08.2008. It means that on the date of commission of alleged offence, the victim was less than 14 years of age. A child at such stage cannot be presumed to be of sufficient maturity. The POCSO Act has been enacted with clear objective to protect the children from crimes against them. For such reason only the offences under the POCSO Act have been termed to be serious, heinous and attract severe punishment.

10. Petitioner Dinesh Kumar alias Bittu is 36 years old and petitioner Amir Khan is aged about 29 years. The offences

alleged against them undoubtedly are of serious and heinous nature. This gains more importance when one looks at the age difference between the victim and the petitioners. No plausible reason has been made out atleast prima-facie on behalf of the petitioners to cast any doubt on the prosecution story at this stage. Mere delay in lodging the FIR will not help the petitioners in their prayer for bail. Keeping in view the age of the victim and she having been allegedly put into fear of life, the delay in lodging the FIR can be said to be explainable during trial.

11. The investigation has been completed and the police has found prima-facie case against the petitioners. Keeping in view the facts of the case, it cannot be said that there are no prima-facie or reasonable grounds to believe that the accused have not committed the offence. As noticed above, the accusation against the petitioners are of serious and grave nature. The victim is of young age and in case of release of petitioners on bail, the possibility of petitioners trying to influence the victim and other material witnesses cannot be ruled out.

12. In view of above discussion, there is no merit in these petitions and the same are rejected.

13. 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.

Both petitions stand disposed of.

16th November, 2022
(GR)

(Satyen Vaidya)
Judge

High Court of J&K
O.A.P.R.