

**In the Court of Rajeev Bhardwaj, Special Judge,
Shimla, H.P.**

CNR No.: HPSHI00020542021
CIS Case Type: Bail Application
CIS Registration No. : 133/2021
CIS Case Year : 2021
Bail Application No. : 69-S/22 of 2021
Date of Institution: 29.04.2021
Date of Decision: 17.05.2021

Shivam Gharu @ Talli son of late Sh. Ashok Kumar, R/O
Sunder Building, Krishana Nagar Shimla, aged about 24 years,
through his sister Loveleen D/O late Sh. Ashok Kumar, R/O
124 Sunder Bilding, Krishana Nagar, Shimla, H.P. (Presently
lodged in judicial custody).

...Bail applicant/accused.

Versus

State of of Himachal Pradesh.

..... Respondent.

CNR No.: HPSHI00021902021
CIS Case Type: Bail Application
CIS Registration No. : 150/2021
CIS Case Year : 2021
Bail Application No. : 79-S/22 of 2021
Date of Institution: 07.05.2021
Date of Decision: 17.05.2021

2) Praveen Chauhan @ Bobby, son of Sh. Het Ranm Chauhan,
resident of Mandyal Colony near Sunder Building No. 124,
Krishana Nagar Tehsil & District, Shimla, H.P. (Presently
lodged in judicial custody).

...Bail applicant/accused.

Versus

State of of Himachal Pradesh.

..... Respondent.

Bail applications under Section 439 of the Cr. P. C. in F.I.R. No.13/2021, dated 06.03.2021 registered under Sections 363, 366A, 376 & 120B of IPC & Section 4 of POCSO Act with Police Station New Shimla, District Shimla H.P.

For the bail applicants: S/Sh. Mohar Singh & Devinder S. Kanwar, Advocates.

For the respondent: Shri B.S. Negi, Id. P.P.

ORDER:

The aforesaid bail applications under Section 439 of Cr. P. C. are taken up together, as they arose from the same FIR No. 13/2021, dated 06.03.2021 under Sections 363,366A, 376,120B IPC and 4 of POCSO Act, registered with Police Station New Shimla, District Shimla, H.P.

2. The gist of the police story is that child victim is studying in 10th class in Middle School, Jhinjadi, Lower Khalini, Shimla. On 06.03.2021 the child victim went to the school at about 9:30 A.M., but she did not return back. At about 5:00 P.M., the child victim rang up her mother that she was going to marry to Rahul @ Doli. Thereafter, she switched off the mobile phone. It was transpired that accused Rahul Dhawan with the help of bail-applicants Praveen Chauhan and Shivan Dharu took the child victim in the vehicle bearing No. PB-07 BG 1739 from Khalini. At Totu Bazaar, the accused Rahul Dhawan and

the child victim purchased marriage related things and with the help of Susheela and Reeta Gupta marriage was performed at Shiv Mandir Totu without performing any ritual. In the evening, accused Rahul Dhawan and the victim stayed in the Sun-N-Snow hotel at Khalini and the bail applicants in another room. Consequently, the present FIR was registered against the bail-applicant.

3. The present application under Section 439 of Cr.P.C. has been moved for the grant of bail. It is averred that the bail-applicants are innocent persons and they have been falsely implicated in this case. The investigation is complete and nothing is to be recovered from the bail applicant. He has further given undertaking that he shall abide by all the conditions which may be imposed by the Court, if they are released on bail.

4. In reply, the police have opposed the bail by submitting that in the event of bail, the bail applicants may threaten the witnesses and further may hamper the investigation. There is also possibility of the bail-applicants jumping the bail.

5. Arguments heard. I have also gone through the case file.

6. Learned counsel for the bail-applicant submitted that in view of the role played by the bail-applicants and the release of the main accused, they deserve to be granted bail.

7. Per contra, learned PP has submitted that the bail-

applicant has committed grave offence against the minor girl and he should not be granted bail.

8. The conditions which are applicable for the grant of bail under Section 437 Cr.P.C. are also applicable for the grant of bail even under Section 439 of the Cr. P. C. The law is well settled that bail is a rule and jail is an exception.

9. The role of the bail applicants is limited to the extent of helping and facilitating the main accused Rahul Dhawan in performing the marriage with the child victim. On this aspect, the investigation has already been completed and now the police custody is no more required by the police.

10. The principles for granting bail can be succinctly culled out, (i) whether there is any prima facie or reasonable ground to believe that the accused has committed the offence, (ii) the nature and gravity of the offence, (iii) severity of the punishment, (iv) chances of the accused absconding or fleeing away if granted bail, (v) the character, behaviour, antecedents, means, position and standing of the accused in the society, (vi) likelihood of the offence being repeated, (vii) reasonable apprehension of the witnesses being tampered with or the investigation being interfered with.

11. However, there is nothing on record to substantiate the contention of the prosecution that the bail-applicant may escape the trial or threaten the witnesses. Moreover, the main accused Rahul Dhawan has already been granted bail by the

Hon'ble High Court in Cr.MPM No. 606/2021 dated 06.05.2021.

12. As far as possible, parity must be maintained if the cases are identical or the matter arises out of the same facts. When the co-accused Rahul Dhawan had already been released by the Hon'ble High Court vide order dated 06.05.2021 on bail in similar facts and circumstances, the bail-applicant also deserves similar treatment. In the case of ***Kishan Singh Sarkar v. Rajesh Ranjan alias Pappu Yadav, 2005 AIR (SCW) 536***, it has been observed by the Honble Apex Court that the judicial principle requires that the uniformity and parity should be normally observed. As the other co-accused have been released on bail by this Court, the present bail-applicant also deserves the same treatment.

13. Having regard to the entire facts and circumstances of the case, the bail-applicant cannot be kept in jail for an indefinite period as it amounts to predetermination of the guilt. The further detention of bail-applicant would not only affect his career, but also his standing in the society. It can not be lost sight that the bail-applicant is a local resident and there is no chance of him from fleeing from justice and securing his presence during trial. Moreover, the allegations against the bail-applicant are not so serious and grave as against the other accused and he is no more required for the investigation of the case.

14. After balancing all the material considerations, which should weigh with the Court while dealing with the bail

application and whilst taking cumulative view of the above mentioned broad features, I feel that it is an appropriate case where the bail deserves to be granted.

15. Accordingly, the bail applications are allowed and bail-applicants be released on bail subject to furnishing personal bond in the sum of ₹1,00,000/- (rupees one lac) with two sureties each of the like amount to the satisfaction of the learned Judicial Magistrate, Ist Class Court No.3, Shimla/ Illaqua Magistrate. However, release of the bail-applicant is subject to the following conditions:-

- i) That the bail applicants shall make themselves available for interrogation as and when called by the investigating officer in this case.
- ii) That the bail applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer.
- iii) That the bail applicants shall not leave the country without the prior permission of the investigating officer or the Court.
- iv) The bail applicants shall attend the trial on each date, unless exempted.

- v) In case of non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the bail applicants undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of Cr.P.C. The failure of the petitioner to reimburse the State shall entitle the trial Court to order transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be only to trace the bail applicants and relates to the exercise undertaken solely to nab the bail applicants in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.
- vi) In case the bail applicants commit any fresh offence during the bail, then they shall intimate the SHO of the present police station, with all the details of the present and the new FIR, within thirty days of the knowledge of such fresh FIR. In such a situation, it shall be

open for the State, if it deems fit and proper, to apply for cancellation of this bail.

- vii) The bail applicants shall surrender all firearms along with ammunitions, if any, and the arms license to the concerned authority within 30 days from today.
- viii) The bail applicants shall inform the SHO about the place of residence during trial. The bail applicants shall intimate about the change of residential address, within two weeks from such change, to the police station, and after filing of the Police report also to the trial Court.
- ix) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the bail applicants.

16. The police is at liberty to move this Court for cancellation of this order, in case, any of the above condition is found violated.

17. The observations so made, herein above, are confined to the disposal of the present bail application and same shall have no bearing on the merits of the case. File of this Court, be consigned to the record room, after due completion.

Shivam Dharu Vs State of H.P. CNR No. HPSHI00020542021
Praveen Chauhan Vs State of H.P. CNR No. HPSHI00020542021
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Announced and signed in the open court today this
17th day of May, 2021.

Sd/-

(Rajeev Bhardwaj)
Special Judge, Shimla, H.P.

*PS

Special Judge Shimla