

**In the court of Kanta Verma, Additional Sessions Judge,
Special Judge, Fast Track Special Court, Kangra at
Dharamshala, District Kangra, Himachal Pradesh.**

CNR HPKA-01-005615-2022
Comp. Reg. No. BA/599/2022
Bail App. No. :72-N/XXII/2022.
Date of Institution : 10.10.2022
Date of Decision : 15.10.2022.

Mohit Kumar son of Shri Satish Kumar resident of Ward No. 6
Nagar Panchayat Jawali, Tehsil Jawali, District Kangra-H.P.

.....Bail applicant/accused.

-Versus-

The State of Himachal Pradesh.

.....Respondent

For the applicant : Shri M.G. Thakur, Ld. Advocate.

For respondent : Shri R.D. Chaudhary, Ld. SPP.

Bail Application u/s 439 Cr.P.C.

ORDER:

This order shall dispose of an application filed by the applicant/accused under Section 439 of Cr.P.C for grant of bail.

2. As has been averred in the application, FIR No. 284/2022 dated 20.09.2022 under Section 324, 354, 354D, 509, 506 IPC and Section 8 & 12 of POCSO Act has been registered against the applicant/accused on false and frivolous facts and a story concocted by the complainant. In fact the complainant, who belongs to Sikh community alongwith his

friends, all armed with knives (Gattra) attacked and gave beatings to him on 20.09.2022 in the college function. Police of Police Post Rehan even got him medically examined on the history of being beaten up by the complainant. Therefore, in order to save himself, the complainant got the instant false FIR registered against him on the ground of his having molested his sister. The investigation of the case has already been completed and nothing remains to be recovered from him. No purpose thus would be served by keeping him behind the bars. With the further averments that he would abide by the terms and conditions of bail, if released on bail, the applicant/accused sought his release on bail. Hence, the application.

3. The prosecution resisted the application by filing reply/status report averring therein that the complainant was/is a college student. His sister (hereinafter to be referred as the victim) was/is studying in BA second year. She disclosed him that the accused used to stalk her. The complainant thus advised him several times not to do so, but to no avail. On 20.09.2022, around 6:00 p.m. the victim telephonically informed the complainant that the accused had reached her college and was harassing her. The complainant narrated the incident to his uncle (Taya) and aunt (Tayi) whereafter they all went to the college of the victim. The accused was present in the college. On being enquired by the complainant, he asked him to do whatever he wanted to do. The complainant asked him to come to a side, whereupon he gave a knife blow on left side of his hip

and pushed him thereby causing bleeding injuries to him. The complainant straightaway went to hospital at Jawali. Ultimately, the complainant narrated the occurrence to the police, and finally a formal FIR came to be registered against the applicant/accused. Investigation commenced. During investigation, the Investigating Officer prepared rough site plan on the spot, took the pant and underwear of the complainant into possession, got the victim and the accused medically examined and obtained their respective MLCs, seized T-shirt and lower of the applicant/accused, got the spot identified from the accused and prepared rough site plan thereof, got the statement of the victim recorded under Section 164 Cr.P.C, obtained her birth certificate and recorded the statements of the witnesses. It has been averred that the house of the complainant exists 500 meters away from the house of the applicant/accused and he could show his resentment in case the applicant/accused is bailed out. Moreover, the applicant/accused, if bailed out can threaten the prosecution witnesses. The prosecution thus prayed for the dismissal of the bail application.

4. I have heard Id. counsel for the applicant/accused as well as Id. SPP for the respondent/State.

5. Learned counsel for the applicant/accused submitted that that the applicant/accused has been falsely implicated in the case. In fact the complainant alongwith three-four boys had thrashed the applicant/accused and he was even

got medically examined by police of PP Rehan. The instant FIR thereafter only was lodged by the complainant to save his skin. The investigation is almost complete and further detention of the applicant/accused is not required. The applicant/accused would abide by the terms and conditions of bail, if enlarged on bail. Id. counsel for the applicant/accused thus prayed that the applicant/accused be released on bail.

6. Per contra learned S.P.P. submitted that the applicant/accused has committed a heinous offence and therefore bail application filed by him be rejected.

7. I have given anxious thought to the rival submissions at bar and have also gone through the record carefully.

8. Hon'ble Supreme Court in ***P. Chidambaram vs. Central Bureau of Investigation AIR 2019 SC 5272*** has held:

22.The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or

the likelihood of his absconding; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi and another* (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits.

9. Hon'ble High Court in **Pawan Dixit V/S State of Himachal Pradesh 2018 (1) Shim.LC 1** in para 10 has held as under:

[10] By now it is well settled that gravity alone cannot be decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. The Hon'ble Apex Court in *Sanjay Chandra versus Central Bureau of Investigation, 2012 1 SCC 49*; has been held as under:-

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be

considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson."

10. As per prosecution, the applicant/accused stalked, the victim, outraged her modesty and caused hurt to her

brother/the complainant with a knife. The applicant/accused is in custody since 23.09.2022. Nothing remains to be recovered at his instance. No fruitful purpose thus would be served by his further incarceration.

11. The applicant/accused is not alleged to be involved in commission of any offence including similar offence in the past nor the prosecution is apprehensive of his jumping over the bail, if enlarged on bail. Therefore, further detention of the applicant/accused is not required nor justified on this count as well.

12. Although the prosecution has claimed that the applicant/accused resides just 500 meters away from the house of the victim, and if bailed out, may frighten and threaten the prosecution witnesses, yet it is mere apprehension of the prosecution not sufficient to disallow his bail application, especially when it can be well met by releasing him on bail subject to stringent conditions and he had undertaken to abide by the conditions of the bail.

13. Therefore, in view of overall facts and circumstances of the case and in view of the law laid down by the Hon'ble Apex Court and Hon'ble High Court in the cases hereinabove, the application is allowed and the applicant/accused is ordered to be released on bail, on his furnishing personal bond in the sum of Rs. 30,000/-, with one surety in the like amount to the satisfaction of Ld. CJM Kangra at Dharamshala/ Ld. JMFC Court No.2 Dharamshala, subject to

the following conditions:-

- (i) that he shall not tamper with the prosecution evidence and shall not directly/indirectly make any inducement, threat or promise to any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or to the police;
- (ii) That he shall join the investigation as and when required;
- (iii) that he shall appear in the Court on each and every date of hearing,
- (iv) that he shall not commit any offence similar to the offence of which he is accused and
- (v) that he shall not leave the country without prior permission of the Court;

14. The bail application stands accordingly disposed of. However, my observations herein-above, are confined only to the disposal of the instant application and shall not be construed as an opinion on the merits of the case. Be tagged with concerned FIR for record.

Announced
15.10.2022

(Kanta Verma)
Additional Sessions Judge,
Special Judge,
Fast Track Special Court,
(under POCSO Act), Kangra
at Dharamshala. Distt. Kangra
(Himachal Pradesh)