

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.MP(M) No.78 of 2007

Date of decision: 15th February, 2007

Rajender Kumar	Versus Petitioner
State of H P	Respondent

Coram:

The Hon'ble Mr.Justice Surinder Singh, J.

Whether approved for reporting ?¹

For the Petitioner : Mr Ajay Chandel, Advocate.

**For the Respondent : Mr.Ashok Chaudhary, Addl.
Advocate General.**

Suridner Singh,J.(Oral)

The petitioner is in judicial lock up pursuant to an FIR No. 440 of 2006 dated 27.12.2006 under Sections 376, 342 and 506 of the Indian Penal Code registered in the Police Station, Sadar, District Bilaspur (HP) and has preferred the instant petition under Section 439 CrPC for seeking bail after facing rejection from the Sessions Judge.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?*

Precisely, the case of the prosecution is that one of the prosecutrix was married to Achhar Singh, who was serving in Army and was residing in her parental village Ladraur. She had gone to purchase some medicines while returning she met another prosecutrix whose marriage was settled with Naresh Kumar but it broke later. Yet the second prosecutrix wanted to marry said Naresh Kumar. Both of them came to the house of parents of the first prosecutrix and tried to contact Gita Devi wife of the accused but the phone was attended by the accused-petitioner who agreed to settle the matter and told them to meet on 26.12.2006 at Ghumarwin. The petitioner took them to his house, his family members were away to Ludhiana. After taking meals around 9.30 pm the accused-petitioner called them to his bedroom and gave one peg of liquor to each of them and then committed rape on both of them one by one by brandishing pistol and proclaimed that he had six cartridges and asked them not to make any noise, lest they would be killed, thereafter also threatened not to disclose the matter to any one. In the wee of the hours of the morning, both the

two ladies ran away and reported the matter to Rattan Singh a Ward Member and his wife. The matter was then reported to the police by one of the prosecutrix and statement of the complainant was recorded in the presence of the *Pradhan* of the Gram Panchayat which resulted into the registration of the present FIR.

The police had prepared the site plan and took into possession a toy pistol, which was identified to be the same by the prosecutrix along with their shawls and a bed sheet recovered from the house of the accused-petitioner. One of the prosecutrix was medically examined and the second refused for the examination. Both the victims are aged about 26 and 21 years respectively.

Bail to the petitioner was denied by the Sessions Judge, Bilaspur, on the ground that both the victims were taken by the accused-petitioner to his house and administered them liquor and committed rape by terrorizing them as aforesaid. The Sessions Judge took a note of the influence exercised by the petitioner by getting an affidavit of the second prosecutrix by the petitioner denying the incident which was tagged with the application

for bail, which according to him, was an attempt to win over the witness. The petitioner had four FIRs against him petitioner since the year 1984 till date. He is also a previous convict and had faced three years imprisonment besides this he is also facing trial in case FIR No.232 of 1997 under Sections 147,148,342,295,436,427 and 323 of the Indian Penal Code. Thus his attempt to get the bail from the court of Sessions had failed.

Now by the present application, the accused-petitioner contended that he is an Ex-Pradhan and a law abiding citizen. He was not involved in the commission of the alleged offence. He is in judicial custody and no more recovery is to be effected in this case. Investigation of the case is complete and he would join the investigation and trial of the case as and when directed.

The learned counsel for the petitioner and the learned Additional Advocate General were heard and the record of the police was also perused.

Though a detailed examination of evidence and elaborate documentation is required to be avoided by the court while passing orders on bail

applications, yet the court, dealing with the matter should be satisfied whether there is a prima-facie case, but in this exercise exhaustive exploration on merits is not at all necessary.

As a matter of fact, Section 439(1) of the Code of Criminal Procedure confers special Powers on the High Court or the Court of Sessions to grant bail. While exercising its judicial discretion in considering the question of granting bail cannot be oblivious of the considerations of the likelihood of the accused being guilty of an offence punishable with death or imprisonment for life and cannot ignore the mandate of law of bail under section 437 of the Code. Thus, the powers are untrammelled and are not in any way controlled or coloured by the considerations incorporated under section 437 *ibid*. However, the considerations such as nature of charge or evidence, the severity of punishment awardable are not by themselves material for the determination whether bail should be granted but they are only relevant so far as they affect the likelihood of the accused taken the trial.

Keeping in view the law regarding bail on one hand and on the other gravity of the offence, nature of punishment, standard of evidence, character and antecedents of the accused-petitioner, as the petitioner is a previous convict and has also been previously accused of the offence of a very serious nature, the modus operandi in the case in hand and on the top of it obtaining the affidavit of one of the prosecutrix shows influence even while in custody, the liberty of bail would be a misuse of the legal process. Accordingly the bail application is dismissed.

Any observation made hereinabove would not affect the merits of the case in any manner. The Investigating Agency to expedite the matter and put up the challan in the court, if not already done.

February 15, 2007
(D)

(Surinder Singh),
Judge.