

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.40 of 2009.

Date of decision: 30.01.2009

Harjeet Singh alias Raja

.... Petitioner

Vs.

State of Himachal Pradesh

.... Respondent

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the Petitioner : Mr. Bhupinder Ahuja, Advocate.

**For the Respondent : Mr. A.K. Bansal, Additional
Advocate General.**

Kuldip Singh, Judge. (Oral)

This is an application under Section 438 Cr. P.C. for releasing the petitioner on bail, in FIR No. 423 of 2008, dated 18.11.2008, registered at Police Station, Paonta Sahib, District Sirmour, H.P. under Sections 354,363,366,376, 506 read with 34 IPC etc. The status report has been filed. Heard and perused the record.

The learned counsel for the petitioner has submitted that petitioner has been falsely implicated in the case. The petitioner has not committed any offence much less as alleged by the prosecution concerning two girls 'X' and 'Y'. The learned counsel for the petitioner

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

has submitted that even as per the prosecution case, no case under Section 376 is made out against the petitioner. The petitioner is innocent. He is permanent resident of Ward No. 6, Paonta Sahib, District Sirmour. He is ready to join the investigation. The custodial interrogation of the petitioner is not necessary. The other two accused namely Manjeet and Gurpreet have already been arrested and they have not been released on bail. It is only in the supplementary statement of one girl some allegations were made against him for committing indecent activities. It has been submitted that the petitioner will comply the directions of this Court in case he is released on bail. The petitioner earlier filed bail application under Section 438 Cr. P.C. which was dismissed by the learned Sessions Judge on 03.01.2009.

The bail application has been opposed by the learned Additional Advocate General mainly on the grounds that petitioner is equally instrumental in the commission of the offence in such circumstances, the other two accused Manjeet and Gurpreet raped the two girls in the room of the petitioner and the petitioner also committed indecent acts with the girls, which cannot be without connivance of the petitioner. It is also the case of the petitioner that some how accused Manjeet initially took the girls in a hotel room, removed their clothes and made a film of the girls on his mobile phone. Manjeet accused later on used the threat of mobile film prepared by him of the two girls for black mailing them. The girls are minor, the offence committed by the accused is very serious. It is not in public interest to release the

petitioner on bail under Section 438 Cr.P.C. The petitioner in order to avoid his arrest has already gone underground.

I have considered the submissions made by the learned counsel for the parties. In the status report it has been stated that the petitioner could not be arrested because he has gone underground after the registration of the case. It is strange that the FIR was registered on 18.11.2008 and thereafter, on 24.11.2008 the petitioner filed an application under Section 438 Cr.P.C. for releasing him on bail in the Court of learned Sessions Judge, Nahan. He made another application in this Court but police could not trace him. The prosecution case is that two girls were raped in the room of petitioner and he has also committed indecent acts with the girls in the same room. In view of the facts and circumstances of the case, it cannot be said that the petitioner is innocent. It can be safely inferred that two other accused raped the girls in the room of the petitioner in connivance with him. Therefore, it cannot be said at this stage that the petitioner is innocent. The fact that he has gone underground is another factor which goes against him. In these circumstances, the petitioner is not entitled to bail under Section 438 Cr.P.C., accordingly application is dismissed.

The observations made in this order shall not be treated as expression of opinion on the merits of the case.

(Kuldip Singh)
Vacation Judge

January 30, 2009
(brb)