

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.M.P.(M) No. 1075 of 2009

Date of decision : 31.12.2009

Dinesh Kumar

...Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

Coram

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

Whether approved for reporting ? No

For the Petitioner : Mr. Naresh Kumar Sood, Advocate.

For the Respondent : Mr. R.P. Singh, Assistant A.G.

Kuldeep Singh, Judge (Oral)

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in FIR No. 58/2009 dated 13.8.2009 registered at Police Station, Brow, under Sections 376, 323, 506 IPC. The status report has already been filed.

2. Heard and perused the record. The prosecution case in brief, is that prosecutrix aged about 34 years on 13.8.2009 reported at Police Station that on 8.8.2009 Dinesh Kumar Sood met her at about 7.15 P.M. They are neighbours at Nogli. He offered to give lift to her for going to Nogli but turned the vehicle towards Baroh road. The prosecutrix asked him where he was going. On this, petitioner told her that he had some work at Jakatkhana but he took the vehicle even

Whether reporters of Local Papers may be allowed to see the Judgment ?Yes

beyond Jakatkhana. He gave mango juice bottle to the prosecutrix. The moment she took one sip of the juice, she found it to be of different taste, she started shivering. On the insistence of prosecutrix petitioner turned the vehicle beyond Chati and reached near Bayal via Baroh at an isolated place. The prosecutrix was sitting on the rear seat of the vehicle.

3. The petitioner took out the prosecutrix from the vehicle and committed forcible sexual intercourse with her. The prosecutrix objected and she started weeping and wanted to run away from the spot but the petitioner hit her with a stone and laid her down by pulling her hair. He also threatened that he would kill her. Thereafter, the petitioner put the prosecutrix in the vehicle and proceeded towards Bayal and stopped the vehicle at Dutt Nagar. The petitioner threatened the prosecutrix that he would kill her in case she would disclose the incident to anyone. The petitioner then proceeded towards Nogli. On the way, the prosecutrix saw her brother Dinesh Kumar in another vehicle, she cried but the petitioner sped away from that place. The petitioner took the prosecutrix to Khaneri hospital where doctor attended her. The petitioner then left her near Nogli on road. The prosecutrix could not report on that date due to injuries sustained by her as well as due to fear. She ultimately reported the matter on 13.8.2009.

4. The learned counsel for the petitioner has submitted that petitioner was arrested on 20.8.2009. It has been submitted on behalf of the petitioner that investigation in the case is complete and no purpose will be served by detaining the petitioner in custody for

indefinite period. The learned counsel for the petitioner has submitted that petitioner is ready to furnish bail bonds in accordance with the directions of this Court. The petitioner earlier filed bail application under Section 438 Cr.P.C. which was dismissed by this Court on 19.8.2009. The petitioner filed another bail application under Section 439 Cr.P.C. which has been dismissed by the learned Sessions Judge, Kinnaur at Rampur on 8.12.2009.

5. The bail application has been opposed by the learned Assistant Advocate General on the ground that the petitioner has committed serious offence. The prosecutrix herself has explained the delay why she had not reported the matter to the police on 8.8.2009 when prosecutrix actually reported the matter on 13.8.2009. It has been submitted that the prosecutrix and petitioner were known to each other. Petitioner took undue advantage of the acquaintance between the complainant and the petitioner. The prosecutrix un-suspectively agreed to accompany the petitioner for returning to her home but the petitioner committed forcible sexual intercourse with the prosecutrix against her wish. She was even given beatings so as to remain silent and not to disclose the incident to anyone. It has been submitted that the two bail applications of the petitioner have already been dismissed. There is no change of circumstance.

6. I have considered the rival contentions of the learned counsel for the parties. The prosecutrix agreed to return to her home along with the petitioner in his vehicle as petitioner and prosecutrix are neighbours and were known to each other. The petitioner took the advantage of the situation and instead of directly dropping the

prosecutrix at Nogli, he proceeded towards different directions and committed forcible sexual intercourse with the prosecutrix. It is the case of the prosecution that petitioner even gave beatings to the prosecutrix and threatened her not to disclose the incident to anyone otherwise, he would kill her. The petitioner took the prosecutrix even to a doctor and thereafter dropped her on the road at Nogli. The prosecutrix while lodging the report on 13.8.2009 to the police has stated that she could not report earlier due to fear and threats of the petitioner. The two bail applications of the petitioner have already been rejected. There are serious allegations against the petitioner. It is not in public interest to release the petitioner on bail at this stage. Accordingly, the application is dismissed.

7. The observations made in this order are for disposal of the bail application only and the same shall not be construed as express of opinion on the merits of the case.

December 31, 2009
(GR)

(Kuldip Singh),
Judge.