

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr.MP(M) No.40 of 2010**

**Date of decision: 29.1.2010**

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**Varinder Kumar**

**..... Petitioner.**

**Vs.**

**State of H.P.**

**.... Respondent.**

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***Coram***

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

***Whether approved for reporting?<sup>1</sup>***

**For the Petitioner : Mr. Naveen Bhardwaj, Advocate**

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

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**Kuldip Singh, Judge (Oral)**

This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in FIR No.309/09 dated 16.11.2009 registered at Police Station, Kangra, under Sections 376, 323, 506 IPC. The status report has been filed.

2. Heard and perused the record.

3. It has been submitted on behalf of the petitioner that petitioner has been falsely implicated in FIR No.309/09 dated 16.11.2009 registered at Police Station, Kangra, under Sections 376, 323, 506 IPC. The petitioner had earlier filed bail application which has been dismissed by learned Sessions Judge, Kangra at Dharamshala on 8.1.2010. The petitioner is innocent. It has been submitted that petitioner and prosecutrix were in love with each other

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

for the last 6/7 years. The marriage of the petitioner was solemnized on 16.2.2008 with another girl, but prosecutrix remained in touch with petitioner both physically and mentally. The prosecutrix was compelling the petitioner to take divorce and marry her. The petitioner had shown his inability to accept the demand of prosecutrix. In these circumstances prosecutrix had made false case against the petitioner and FIR was registered.

4. The prosecutrix is 24 years of age. It is a case of consent. The petitioner was given beatings by prosecutrix and her brother. The learned Sessions Judge has erred in rejecting the bail application of the petitioner. The petitioner is ready to furnish bail bonds in accordance with the directions of this Court.

5. The bail application has been opposed by learned Addl. Advocate General on the basis of status report. It has been alleged that on 16.11.2009 prosecutrix and others had come to the Police station and prosecutrix made a statement that she was graduate. Virender Kumar was her neighbour. She has also stated that her bath room had no roof and some how when she was bathing petitioner prepared her movie on his mobile phone. The petitioner had committed forcible sexual intercourse with the prosecutrix at Akrana Forest about 2/3 months ago. She had even consumed poison. On 15.11.2009 petitioner had told the prosecutrix on her mobile phone that if she would not meet him then he would transmit the aforesaid movie through SMS to others. On 16.11.2009 she had gone to Kangra Bazar. On return Virender Kumar also boarded the same bus. The prosecutrix alighted from the bus at Sadubandgra,

Virender also followed her and had forcible sexual intercourse with her in the bushes after pulling her. The prosecutrix objected but on this Virender struk her 3 or 4 times with stone and told the prosecutrix that in case she would not marry him then he would kill her and he will also commit suicide. The prosecutrix contacted her brother Pradeep. Virender snatched her mobile and ran away from there towards his house and returned with drat and gave a drat blow on the right leg and head of the prosecutrix.

6. The medical examination of the prosecutrix was got conducted. The petitioner was arrested on 24.11.2009. It has also been stated in the status report that prosecutrix had chewed the memory card of mobile phone of the petitioner, therefore, there is no evidence of movie allegedly prepared by Virender. The learned Addl. Advocate General has prayed for dismissal of the bail application.

7. I have considered submissions made by learned counsel for the parties. The report was made on 16.11.2009 by the prosecutrix. She has alleged that she was raped 2 or 3 months prior to the date of report. It has not been made clear why the prosecutrix had not lodged the report earlier. The prosecutrix is a graduate and 24 years of age. The evidence of preparing movie by petitioner on the mobile phone of the prosecutrix according to Prosecuting Agency has been destroyed as the memory card of the mobile phone of the petitioner had been chewed by the prosecutrix.

8. The learned counsel for the petitioner has submitted that the petitioner and the prosecutrix were having affair for the last about

6/7 years but in the meantime the petitioner got married on 16.2.2008 with another girl and for this reason the petitioner has been falsely implicated by the prosecutrix and her family members. In the MLC of the prosecutrix referred in the status report no injury found on genitalia or thighs and breasts. Hymen ruptured, old tears, vagina admits 2 fingers easily. The investigation in the case is almost complete. No recovery is to be made. It is not in the interest of either party to elaborate more at the stage of consideration of bail application. In brief the petitioner has made out a case for grant of bail.

9. Accordingly application is allowed and the petitioner is ordered to be released on bail in FIR No.309/09 dated 16.11.2009 registered at Police Station, Kangra, under Sections 376, 323, 506 IPC on his furnishing personal bond in the sum of Rs.20,000/- with one surety of the like amount to the satisfaction of any learned Judicial Magistrate at Dharamshala with the condition that petitioner shall not hamper the investigation and tamper with the prosecution evidence in any manner.

10. The observations made in the judgment are for disposal of the bail application and shall not be construed as an expression of opinion on the merits of the case.

**Copy Dasti** on usual charges

**January 29, 2010**  
**(sks)**

**( Kuldip Singh )**  
**Vacation Judge.**