

Cr.MP(M). No.489 of 2010.

31.5.2010. Present: Ms. Ritta Goswami, Advocate, for the
Petitioner.

Ms. Ruma Kaushik, Addl. Advocate
General for respondent

The petitioner has been charged for offences under Sections 376 read with Section 506 of the Indian Penal Code on the allegation that he had committed rape on his daughter. He has approached this court for grant of bail. He was arrested on 19th June, 2009 and is now in judicial custody. This court has been informed that the case has been fixed for consideration on charge.

Learned trial court rejected the bail application of the petitioner on 19th January, 2010 on the ground that the victim was the minor daughter of the accused. Her statement under Section 164 Cr.P.C. has been recorded accusing the petitioner of repeatedly having forcible sexual intercourse with her.

It is undisputed before me that the prosecutrix is a minor. The factum of her having made a statement under Section 164 Cr.P.C. is also undisputed. What requires consideration by this Court is her medical examination which was conducted by the doctor on 19.6.2009. Prima facie the report states in no unclear terms that no sexual intercourse much less forcible sexual intercourse was committed on her. There are no marks or scratches of injury on any part of the body of the prosecutrix. Medical Board was also constituted in the Kamla Nehru Hospital, Shimla to examine the prosecutrix and its opinion is that there was no recent or remote evidence of complete sexual intercourse. It was opined that the final opinion would be given only after the report of the

Chemical Examiner which also does not corroborate sex with or without force.

Learned Sessions Judge has been swayed more by emotion than by the facts on record. The Court should have been aware that the allegation of the kind leveled against the petitioner is likely to destroy his social reputation for the rest of his life. He has been in jail since 20th June, 2009. The case has now been fixed for consideration on charge.

Prima facie, without going into the relevant merits of the case, I am satisfied that the learned court below has failed to exercise jurisdiction vested in it by law and has been swayed more by morality and emotion than by the hard concrete realities. Statement recorded under Section 164 Cr.P.C. should have prima facie been corroborated by the other evidence in record. Learned counsel appearing for the petitioner submits that the charge is motivated because the prosecutrix is residing with the mother who is not in good terms with the petitioner. I am not going into these allegations as it may prejudice the case of the parties. I am satisfied that continued detention of the petitioner herein does not serve any purpose. This application is accordingly allowed. It is directed that:

- (a) the petitioner shall join the investigation before the police on each and every dates, as required.
- (b) the petitioner shall remain present in Court on each and every date when the case is fixed for proceedings or when otherwise directed by the Court..
- (c) he shall not abscond from the jurisdiction of the learned Sessions Judge, Rampur.

(d) the petitioner shall not tamper with the prosecution evidence or make any attempt to influence or overawe the prosecution witnesses in any manner or hinder the conduct of the trial in any manner whatsoever.

(e) The petitioner shall furnish personal bail bonds in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the Sessions Judge, Kinnaur at Rampur within a period of two weeks from the date when this order is first presented to the learned court undertaking to abide by these terms. In case of breach, the petitioner shall be arrested forthwith without reference to this Court.

Copy dasti on usual terms.

(Dev Darshan Sud),
Judge.

May 31.2010(r)