

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MPM No.11448 of 2013

Date of Decision : September 30, 2013

Narinder KumarPetitioner.
versus

State of Himachal Pradesh ...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

For the Petitioner : Mr. N.S. Chandel, Advocate.

For the Respondent : Mr. R.S. Verma, Additional Advocate General.

Sanjay Karol, Judge(Oral)

Accused-petitioner is seeking pre-arrest bail, under the provisions of Section 438 of the Code of Criminal Procedure, in relation to FIR No.167 of 2013, dated 18.8.2013, under the provisions of Section 363, 366 and 376 of the Indian Penal Code, registered at Polcie Station Ghumarwin, District Bilaspur, Himachal Pradesh.

2. On the statement of accused-petitioner that though he had married the prosecutrix prior to registration of the FIR in question, subsequently he formally solemnized the marriage, this Court, taking into account that allegedly marriage was not acceptable to the parents of the prosecutrix, granted interim bail on 17.9.2013.

3. Today, Mr. R.S. Verma, learned Additional Advocate General, has invited my attention to the statement

of the prosecutrix recorded on 29.9.2013, under the provisions of Section 164 of the Code of Criminal Procedure.

4. Status report as also record perused. Record returned.

5. According to the petitioner, on 5.8.2013, prosecutrix left the company of her parents of her own volition. She is 21 years of age. On 20.8.2013, both he and the prosecutrix solemnized their marriage and started residing together as husband and wife. Prosecutrix also executed an affidavit to this effect before the Executive Magistrate, Nalagarh, District Solan. Prior thereto on 18.8.2013, mother of the prosecutrix lodged an FIR with the police to the effect that her daughter had run away from home in order to solemnize her marriage with someone.

6. Further, according to the petitioner, in the statement of prosecutrix dated 21.9.2013, there is no allegation of force or coercion on his part. After solemnization of marriage, prosecutrix was abducted by the police and her custody was handed over to her relations, under whose pressure she has now made statement on 29.9.2013, under the provisions of Section 164 of the Code of Criminal Procedure, implicating the petitioner.

7. Having heard learned counsel for the parties as also perused the record, I am of the considered view that the petition only merits rejection.

8. It is no doubt true that prosecutrix is 21 years of age. Affidavit sworn-in before the Executive Magistrate,

Nalagarh, *prima facie* shows that marriage between the parties was solemnized on 20.8.2013, but then on 29.9.2013 prosecutrix was produced before the Magistrate and her statement was recorded under the provisions of Section 164 of the Code of Criminal Procedure, wherein she has categorically stated that on 5.8.2013, petitioner forcibly took her to Parwanoo, where she was made to stay in a room. Petitioner threatened her that he has prepared a video, which he would put on the internet. Petitioner forcibly had physical relationship with her. She was also threatened that he would murder the person with whom she would solemnize her marriage.

9. Significantly, this statement is recorded at least nine days after alleged solemnization of the marriage. In this statement, prosecutrix does not state anything about her marriage with the petitioner.

10. It be also observed that petitioner has not lodged any report with any authority with regard to his plea of abduction of the prosecutrix by the police. It cannot be said that prosecutrix was forced to make such statement, under the provisions of Section 164 of the Code of Criminal Procedure, as is evident from the order dated 29.9.2013 passed by the Judicial Magistrate 1st Class, Court No.1, Ghumarwin, District Bilaspur.

11. Petitioner allegedly abducted the prosecutrix from her house on 5.8.2013. Mother of the prosecutrix

lodged complaint on 18.8.2013, only when her daughter was not traceable.

12. It is seen that the petitioner is involved in a heinous crime. At this juncture, *prima facie*, it cannot be said that no case is made out against the petitioner.

13. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

14. Taking all the aforesaid facts into consideration, without expressing any opinion on the merits, the present petition is dismissed. Interim order stands vacated.

15. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

Petition stands disposed of.

September 30, 2013_(sd)

(Sanjay Karol),
Judge.