

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. MP(M) No. 99 of 2014.

Decided on: 29th January, 2014.

Sanjeev Kumar

.....Petitioner.

Versus

State of H.P.

.....Respondent.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

Whether approved for reporting?¹

For the petitioner :

Mr. Manoj Pathak, Advocate.

For the Respondent :

Mr. Ravinder Thakur, Additional Advocate General with Mr. P.M. Negi and Ms. Parul Negi, Deputy Advocates General.

ASI Bhagi Rath, Police Station, West Shimla, is also present.

Dharam Chand Chaudhary, J. (oral).

Petitioner is an accused in a case registered against him under Sections 376(A), 314 and 506 of the Indian Penal Code, vide FIR No.239 of 2013, in Police Station West Shimla. He has been arrested in the case on 6.12.2013 and is still in judicial custody. The investigation in the case is almost complete except for obtaining the report from the Forensic Science Laboratory.

2. The status report placed on record by the learned Additional Advocate General and the record produced by

¹ Whether reporters of Local Papers may be allowed to see the judgment?

ASI Bhagi Rath, Police Station West Shimla, reveals that the case against the accused-petitioner has been registered at the instance of the prosecutrix (name withheld), who belongs to Tripura and is a Research Scholar in the Indian Institute of Advance Studies, Shimla, with the allegations that he initially developed intimacy with her and subsequently solemnized marriage by misrepresenting that he was a bachelor, whereas, he is married and having one small kid also about which she came to know lateron. As per further allegations, on account of they having cohabited as husband and wife after marriage, she conceived a child, however, by administering some medicines the accused-petitioner managed the abortion.

3. There cannot be said to be any quarrel so far as the prosecutrix and the accused-petitioner lived together and cohabited with each other. The only factor which needs consideration would be as to whether it was a consensual act on the part of the prosecutrix or her consent has been obtained by playing fraud upon her or the result of misrepresentation of the fact that being already married and having his family the accused-petitioner has solemnized marriage with her by concealment of all such facts. The determination of this poser needs evidence, which no doubt has been collected by the investigating agency, however, to be scrutinized and its veracity tested by the competent Court at the time of trial. At this stage, when the investigation

is almost complete and the accused-petitioner is permanent resident of District Shimla, Himachal Pradesh, can reasonably be believed to have roots in the society and being so there is no likelihood of his fleeing away from justice and non-availability at the time of trial and for further interrogation, if any, his further detention would be unwarranted. Otherwise also, the prosecutrix being a Research Scholar is an educated woman and not rustic or simpleton. She being 26 years of age, is major also. However, without expressing any observations on merits, which may adversely affect the case of either party. Suffice would it to say that the accused-petitioner who is also a young man of 30 years having his wife and small kid to support is not required to be detained any further in custody, that too, without holding trial against him and rather deserves to be admitted on bail. This application is, therefore, allowed and it is ordered that the accused-petitioner, who presently is lodged in judicial custody, in connection with FIR No.239 of 2013, registered in Police Station, West Shimla, shall be released on bail, subject to his furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of learned Chief Judicial Magistrate/Judicial Magistrate, Shimla and further abide by the following conditions:-

That he shall:

- (a) make himself available for the purpose of interrogation as and when required and shall

cooperate with the Investigating Officer to conduct the investigation in a manner so as to take it to its logical end;

(b) not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and

(d) not leave the territory of India without the prior permission of the Court.

4. It is clarified that if the petitioner misuses his liberty or violates any of the conditions imposed upon him; the Investigating Agency shall be free to move this Court for cancellation of the bail.

5. The observations hereinabove shall remain confined to the disposal of this petition and have no bearing on the merits of the case. The petition stands disposed of.

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January 29, 2014
(rc)

**(Dharam Chand Chaudhary),
Judge.**