

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.M.P.(M) No. 358 of 2020

Date of decision: 23.3.2020

Rajesh Sharma.

...Petitioner.

Versus

State of Himachal Pradesh.

...Respondent

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner: *Mr.Nikhil Chug, Advocate, vice Mr.Manoj Pathak, Advocate.*

For the Respondent: *Mr.R.P. Singh and Mr.Gaurav Sharma, Deputy Advocate Generals, for the respondent-State.*

ASI Het Ram, I.O. Police Station, Anni present in person along with record.

Vivek Singh Thakur, Judge (oral)

Instant bail application has been preferred by the petitioner for release him on bail in case FIR No. 108 of 2019, dated 6.9.2019, registered under Sections 363, 366 IPC and Section 8 of POCSO Act in Police Station, Anni, District Kullu, H.P.

2. Status report stands filed. According to prosecution case, a case has been registered on the basis of complaint lodged by brother of victim, wherein he has stated that petitioner had allured his sister for marriage, when on 4.9.2019, she had visited Anni hospital for testing of her blood and had induced her to stay with him in Raj Guest House, Anni and during night had violated her person and thereafter in the next morning, left Anni leaving her by asking to go home. It is further stated that victim is less than 17 years old and as such, on the basis of statement of brother of victim, FIR under Sections 363, 366 and 376 IPC and Section 4 of POCSO Act was registered.

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

3. It is also submitted in status report, filed today, that on the basis of chemical analysis report received from Regional Forensic Science Laboratory, Mandi, Medical Officer has opined that there is no evidence of penile penetration and physical assault on the victim and accordingly Section 376 and Section 4 of POCSO Act has been dropped and case has been converted in Sections 363, 366 IPC and Section 8 of POCO Act. According to the status report, petitioner has admitted that he and Kamlesh had stayed in Raj Guest House, Anni, but had denied the violation of person of victim by him, rather stated that on 5.9.2019, at 7:30 A.M. he had sent victim along with her friend to Chhatti by bus.

4. Investigating is complete and challan is likely to be presented in the Court and petitioner is in judicial custody and his custodial interrogation is not warranted at this stage.

5. Considering the entire facts and circumstances of the case, petitioner is ordered to be enlarged on bail, in case FIR No. 108/2019, dated 6.9.2019, registered under Sections 363, 366 IPC and Section 8 of POCSO Act, registered at Police Station Anni, District Kullu, H.P., subject to his furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of trial Court i.e. Special Judge, Rampur within two weeks from today and also subject to following further conditions:-

- (i) *That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;*
- (ii) *that the petitioner shall not directly or indirectly 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 Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;*
- (iii) *that he shall not obstruct the smooth progress of the investigation/trial;*
- (iv) *that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;*

- (v) *that the petitioner shall not misuse his liberty in any manner;*
- (vi) *that the petitioner shall not jump over the bail;*
- (vii) *that he shall keep on informing about the change in address, landline number and/or mobile number, if any, for his availability to Police and/or during trial.*

6. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed necessary in the facts and circumstances of the case and in the interest of justice.

7. In case the petitioner violates any conditions imposed upon him, his bail shall be liable to be cancelled. In such eventuality, prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

8. Learned Special Judge/trial Court is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

9. Observations made in this petition hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of the bail application.

10. Petition stands disposed of in the aforesaid terms.

Copy **Dasti**.

23rd March, 2020
(Keshav)

(Vivek Singh Thakur),
Judge.