

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) Nos.958, 959, 1253 and 1254 of 2020.

Reserved on : 28.8.2020.

Decided on: 31st August, 2020.

1. **Cr. MP (M) No.958 of 2020.**

Radha Devi ...Petitioner.

Versus

State of Himachal Pradesh ...Respondent.

2. **Cr. MP (M) No.959 of 2020.**

Sohan Lal ...Petitioner.

Versus

State of Himachal Pradesh ...Respondent.

3. **Cr. MP (M) No.1253 of 2020**

Sher Singh ...Petitioner.

Versus

State of Himachal Pradesh ...Respondent.

4. **Cr. MP (M) No.1254 of 2020**

Jamna Devi ...Petitioner

Versus

State of Himachal Pradesh ...Respondent.

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The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner(s): Mr. G.R. Palsra, Advocate for the petitioners in Cr. MP (M) No.958 and 959 of 2020.

Mr. Sanjeev Kuthiala, Sr. Advocate with Ms. Garima Kuthiala, Advocate, for the petitioners in Cr. MP (M) No.1253 and 1254 of 2020.

For the respondent: Mr. S.C. Sharma and Mr. P.K. Bhatti, Addl. AGs.

(Through Video Conferencing).

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

Chander Bhusan Barowalia, Judge

The present bail applications have been maintained by the petitioners, under Section 439 of the Code of Criminal Procedure, seeking their release in case FIR No.114 of 2020 dated 13.6.2020, under Sections 363, 366, 344, 323, 376 (3) and 120-B of the Indian Penal Code and Sections 6 and 21 of the Protection of Children from Sexual Offences Act, registered at Police Station Aut, District Mandi, H.P.

2. As per the averments made in the petitions, the petitioners are innocent and have been falsely implicated in the present case. They are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping them behind the bars for an unlimited period, so they be released on bail.

3. Police report stands filed. As per the prosecution story, on 13.6.2020, the child victim (name withheld) alongwith her *massi*, made a written complaint to the police, wherein she alleged that in the year 2019 she was studying in 11th Class. As per the prosecutrix, her mother has taken divorce from her father and she has remarried in Haryana. Since childhood, the prosecutrix used to reside in the house of her maternal uncle and aunt. When she was studying in the school Sachin Thakur (co-accused) son of Sher Singh (one of the petitioners herein) used to meet her. On 12.7.2019, at about 6:00 p.m, co-accused Sachin Thakur came to Garagushani hospital and took her to his house in

his vehicle, where he narrated the entire story to his parents, i.e., Sher Singh and Jamna Devi (petitioners herein). On the subsequent day, mother, father and step mother, Smt. Radha Devi, of the prosecutrix came to the house of co-accused Sachin and her mother asked the prosecutrix to come to her house. On this, father of the prosecutrix, her step mother, Sher Singh and Jamuna Devi (petitioners herein) and co-accused Sachin and Ajay Kumar refused to send her back and compelled her to stay in the house of co-accused Sachin. As per the allegations of the petitioner, co-accused Sachin, many times, committed forcible rape upon her and she is pregnant. The prosecutrix was confined in a room by Sher Singh and Jamuna Devi (petitioners herein) and co-accused Sachin and Ajay for about one month and they did not provide her food. On 11.6.2020, petitioners have beaten her with fist and blows. She rescued herself from the clutches of the petitioners and ran away from the place and came to the room of her *massi*. On 13.6.2020, the prosecutrix alongwith *massi* came to Police Post Balichowki and got lodged a case, against the present petitioners and co-accused. Thereafter, the police machinery was set into motion and investigation ensued. During the course of investigation, the child victim got medically examined from Medical Officer, CHC Balichowki and procured the MLC and preserved blood samples. Thereafter, the police completed all the codal formalities. Police prepared the spot map and recorded the statements of the witnesses under Section 161 of the Code of Criminal

Procedure. The petitioners were arrested. As per the police, after completion of investigation *challan* was presented in the learned Trial Court. Lastly, it is prayed that the bail applications of the petitioners be dismissed, as the petitioners were found involved in a serious offence and there is every possibility that in case at this stage, if they are enlarged on bail, they may flee from justice and tamper with the prosecution witnesses.

4. I have heard the learned Senior Counsel/counsel for the petitioners, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. Mr. G.R. Palsra, learned counsel for the petitioners, namely, Sohan Lal and Radha Devi, has argued that the petitioners have been falsely implicated in the present case. He has further argued that the petitioners are permanent residents of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He has argued that no fruitful purpose will be served by keeping them behind the bars for an unlimited period. On the other hand, Mr. Sanjeev Kuthiala, learned Senior counsel for the petitioners, namely, Sher Singh and Jamuna Devi, has argued that the petitioners are joining and co-operating in the investigation, their custodial interrogation is not at all required by the police. He has further argued that the main king-pin in the alleged offence, as per the prosecution story, is co-accused Sachin Thakur, and the present petitioners had limited role in the alleged

office, so the bail applications be allowed. Per contra, learned Additional Advocate General has argued that the petitioners have committed a serious crime and in case, they are enlarged on bail, they may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail applications of the petitioners may be dismissed.

6. Heard. At this stage, considering the role of the petitioners in the alleged offence, the fact that the prosecutrix has married co-accused Sachin Thakur and they are living as husband and wife, considering the record with regard to age of the prosecutrix, the petitioners are behind the bars for last more than two months and they cannot be kept behind the bars for an unlimited period, investigation in the matter is completed, *challan* has also been presented before the learned Trial Court, custody of the petitioners are not at all required by the police, the fact that the petitioners are ready and willing to abide by the terms and conditions of bail, in case granted, they have neither in a position to flee from justice, as they are residents of the place, this Court finds that the present is a fit case, where the judicial discretion to admit the petitioners on bail is required to be exercised in favour of the petitioners. Under these circumstances, it is ordered that the petitioners be released on bail, in case FIR No.114 of 2020, dated 13.6.2020, under Sections 363, 366, 344, 323, 376 (3) and 120-B of the Indian Penal Code and Sections 6 and 21 of the Protection of Children from Sexual Offences Act, registered at Police Station Aut, District Mandi, on their furnishing

personal bonds to the tune of ₹50,000/- (rupees fifty thousand only) each with one surety each in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- i. That the petitioners will join investigation of case as and when called for by the Investigating Officer in accordance with law.
- ii. That the petitioners will not leave India without prior permission of the Court.
- iii. That the petitioners will 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 the Investigating Officer or Court.

7. In view of the above, the petitions are disposed of.

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31st August, 2020.
(CS)

(Chander Bhusan Barowalia)
Judge