

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.804 of 2021

Decided on: 31st May, 2021

Inder Dev

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

Ms. Justice Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹

For the Petitioner: Mr. Devender K. Sharma, Advocate.

For the Respondent: Mr. Anil Jaswal, Additional Advocate General with Mr. Amit Dhumal, Deputy Advocate General and Mr. Manoj Bagga, Assistant Advocate General.
(Through Video Conference)

Jyotsna Rewal Dua, Judge (Oral)

FIR No.31/2021, dated 20.02.2021, has been registered against the petitioner under Sections 376 and 506 of the Indian Penal Code (IPC) at Police Station Hatli, District Mandi. He is in custody w.e.f. 21.02.2021 and by means of the present petition, seeks his release on regular bail.

¹ Whether reporters of print and electronic media may be allowed to see the order?

2. Heard learned counsel for the parties and gone through the status report as well as the record produced during hearing of the case by the respondent.

3. The prosecution case against the petitioner in nutshell is that the FIR was registered on the basis of a complaint made by a married lady, aged around 43 years and having children of her own. In her complaint lodged on 20.02.2021, she claimed that the petitioner was like a brother to her. On 12.02.2021, she had gone with him to Mandi. She stayed there in his home. During night of 18.02.2021, the petitioner forcibly against the wish of the complainant, established physical relations with her. On returning to her home on 19.02.2021, she disclosed the fact of her having been raped by the petitioner to her daughter, who in turn narrated the incident to her father, whereafter the complaint was lodged with the police, on the basis of which, the FIR was registered.

4. Learned counsel for the petitioner argued that the bail petitioner and the prosecutrix were very well acquainted with each other. The prosecutrix of her own accord had accompanied the bail petitioner to his home in Mandi and stayed there for around six days. At best, it was a case of consensual physical relationship between the two.

Learned counsel for the petitioner further submitted that the petitioner is innocent and has been falsely implicated with the offences alleged against him in the FIR. He prayed for enlargement of the petitioner on bail and submitted that the petitioner will abide by all the terms and conditions, which may be imposed upon him by the Court.

Learned Additional Advocate General while opposing the bail petition, submitted that the petitioner is accused of serious offence. He also submitted that in case the Court is inclined to grant bail to the petitioner, then the same be made subject to stringent conditions including the condition that the petitioner shall not intimidate or threaten the complainant, her family members and the prosecution witnesses in any manner whatsoever.

5. Though at the stage of adjudication of the bail petition, detailed appreciation of the evidence is not required, however, what becomes important to notice at this stage is that the complainant, a married lady aged around 43 years having children of her own, accompanied the petitioner of her own accord on 12.02.2021. She stayed with him in his home at a distant place for about six days. I have seen her statement to the effect that the petitioner was not alone in his house, rather his parents and his married

sister were also there. As per her statement, she did not cry out for help or resisted the petitioner. The complainant did not report the incident to anyone at the time. In her statement, she has mentioned receiving phone calls of her husband on 18.02.2021. However, she did not report the incident to her husband on 18.02.2021. The complainant returned to her home on 19.02.2021 alongwith the petitioner on his scooty. Without going deeper into the evidence and investigation, lest it causes prejudice to the case of either party, in my considered opinion, the petitioner deserves to be enlarged on bail. He is in custody for the last more than three months. Investigation in the matter is complete. Challan stands presented before the Court of competent jurisdiction on 15.03.2021. No criminal history of the petitioner has been indicated in the status report. Petitioner is resident of Village Batahi, Post Office Patrighat, Tehsil Baldwara, District Mandi, Himachal Pradesh, therefore, his presence can be ensured in the trial.

For all the aforesaid reasons, the present petition is allowed. The petitioner is ordered to be released on bail in the aforesaid FIR on his furnishing personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) with one local surety in the like amount to the satisfaction

of the learned Trial Court having jurisdiction over the Police Station concerned, subject to the following conditions:-

- (i).** The petitioner shall join and cooperate the investigation of the case as and when called for by the Investigating Officer in accordance with law.
- (ii).** The petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever.
- (iii).** The petitioner will not leave India without prior permission of the Court.
- (iv).** The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer, complainant, her family members or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v).** Petitioner shall attend the trial on every hearing, unless exempted in accordance with law.
- (vi).** Petitioner shall inform the Station House Officer of the concerned police station about his place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.
- (vii).** Petitioner shall not indulge in any criminal activities. It is made clear that in case the petitioner is arraigned as an accused in future in any FIR, then this bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that

regard. This shall also be considered as a negative factor for consideration of his future bail application, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

Copy dasti.

May 31, 2021
Mukesh

Jyotsna Rewal Dua
Judge