

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.846 of 2021

Reserved on: May 25, 2021.

Date of Decision: May 31, 2021

Sahib Aftab ...Petitioner.

Versus

State of H.P. ...Respondent.

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?¹**NO**

For the petitioner: **Mr. Rahul Singh Verma, Advocate.**

For the respondent: **Mr. Nand Lal Thakur, Addl. Advocate General.**

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Women Police Station	Sections
3 of 2021	3.1.2021	Nahan, District Sirmaur, H.P.	376, 370, 506, 511, 34 of IPC and Sections 6, 17 & 18 of the POCSO Act and Sections 3, 4 & 5 of Immoral Trafficking Act.

Anoop Chitkara, Judge

A boy aged 18/19 years, incarcerating since 15-1-2021, upon his arrest for indulging in paid sex with a minor girl, through a pimp, has come up before this Court seeking regular bail.

¹

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

2. Earlier, the petitioner had filed Bail Application No.49/22 of 2021 before learned Special Judge, Sirmaur District at Nahan, H.P. The same was dismissed vide order dated 31.3.2021.

3. In Para 11 of the bail application, the petitioner declares having no criminal history. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on 2.1.2021, Inspector In-charge, Police Station, Nahan was present in the Police Post, Gunnughat, where ASI Jai Singh produced one lady named Renu Devi and victim alongwith one mobile phone and disclosed that the phone belonged to Renu Devi which had been stolen by the victim from the house of Renu Devi at Paonta Sahib. As the mobile phone had been left in the house of someone at Ranitaal where victim had gone for committing theft of clothes, the said mobile was deposited in Police Post, Gunnughat by someone. When Renu Devi and the victim reached the Police Post for taking the mobile, the victim revealed about the crime being committed against her by Renu Devi. The victim disclosed that the said mobile phone contained the photographs of the boys who committed wrong acts with her. Thereafter, the minor victim aged 16 years was produced before the office of Child Welfare Committee for counseling and then on 3.1.2021, the victim got her statement recorded under Section 154 Cr.PC before Inspector Simple Chauhan, alleging therein that she is a resident of village Manal, Post Office Sataun, District Sirmaur, H.P. Her father is a mason. They are four sisters and she is youngest one. All her elder sisters are married. The name of her mother is Sunita who solemnized second marriage and the name of her second mother is Anita, who is having three children. It is also alleged by the victim that her second mother always scolded her, due to which, she left her house several times and came to Paonta. She had fled away from her house about one month back and remained in Gurudwara for about one month. Thereafter, she remained with her friend Pooja who took her to the house of her aunt, named Renu Devi who has two children, one daughter Laxmi and one son Krishna. She became friend with Luxmi and continued to stay in her house. The husband of Renu and her brother-in-law (Jijaji) Mukesh work together in one place due to which her brother-in-law Mukesh came to know about the fact that the victim is residing in their house. Renu used to compel her to do all household work and used to call boys in her house and asked her to do wrong acts with them and Renu used to charge money for the same from the

boys. Thereafter, she fled away from there and started living in Gurudwara. In the meantime, her brother-in-law saw her, who took her to the house of Renu and he also tried to molest her and threatened to do wrong act with her, if she tried to flee away from house of Renu. After 4-5 days, she fled away from Renu's house with her purse and phone and came to Nahan and threw the purse after taking money and at Nahan she stayed in Ranitaal. During the night if she found any gate of any house open, she used to sleep on the roof of such house. On the basis of this statement, FIR mentioned above was registered. During investigation, the victim was medically examined, accused Renu Devi was arrested on 3.1.2021 and she was also medically examined. On 4.1.2021, as per direction of S.P., Sirmaur, one special team was constituted for the investigation of the case Inspector Simple Chauhan was also made the member of SIT team. During interrogation of accused Renu and after verification of call detail record, on 15.1.2021, accused persons Salman Khan & Sahib Aftab alongwith child victim were associated in the investigation. The victim identified both of these accused as the same persons who had committed rape with her after giving money to Renu Devi. Thereafter, accused Salman Khan and Sahib Aftab (the present petitioner), came to be arrested on 15.1.2021 at about 8-10 p.m. On 17.1.2021, vehicle No.HP-17E-6542 was identified by the child victim in which the accused Salman Khan took her to Paonta Sahib and committed indecent activities with her. Since 18.1.2021, both of these accused are in judicial custody.

5. Ld. Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. On the contrary, the contention on behalf of the State is that the accused is a proven habitual offender, and given his past conduct; he is likely to repeat the offence. He further insists that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

7. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

REASONING:

8. The victim had not approached the Police for sexual assaults, and upon her

arrest for theft of a mobile, she had revealed her tragic ordeal. The Police did a commendable job in initiating an investigation and launching prosecution. However, the Investigator did not ask for a test identification parade. The accused have been involved through the call details. However, such call details infer that the victim was continuously taking his calls and talking to him. The victim alleged sexual acts by many people, and despite that, only three of such customers were arrested. One of the accused was a juvenile and was granted bail. The other two are Salman Khan, aged 20 years, and Sahib Aftab aged 18/19 years. There is a lot to read between the lines, and *prima facie* points towards a bias to pick and choose to trace and arrest the persons who had coitus with the minor victim.

9. The primary factor for bail is the very young age of the accused. Under no circumstances, the conduct of the petitioner is condonable or forgivable if proven to be true. However, a limited question before this Court is to grant or bail or not. These observations nowhere suggest his innocence or lesser role. The period of incarceration already undergone would also be an additional factor for the grant of bail. Therefore, the nature of the evidence against the petitioner and the cumulative effect of all the elements would certainly make out a case for bail at this stage. Thus, in the facts and circumstances peculiar to this case and without commenting on the merits, the present bail application is allowed.

10. Given the above reasoning, the Court is granting bail to the petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

11. In **Manish Lal Shrivastava v State of Himachal Pradesh**, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to switch over to another.

12. The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Ten thousand (INR 10,000/-), and shall furnish two sureties for Rs. Twenty-five thousand only (INR 25,000/-), to the satisfaction of the Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilaqa Magistrate. Before accepting the sureties, the concerned Magistrate must satisfy that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before

the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

13. In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Ten thousand (INR 10,000/-), made in favour of Chief Judicial Magistrate for District Sirmour, H.P.,

- a)** Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account.
- b)** Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.
- c)** If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.
- d)** If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get the online liquidation disabled.
- e)** The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.
- f)** After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.
- g)** It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa.
- h)** Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be.

14. The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

- a)** The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.
- b)** The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.
- c)** The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.
- d)** The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.
- e)** In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any).

[Hon'ble Supreme Court of India in *Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020*]:

- i. At the first instance, the Court shall issue the summons.
- ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.
- iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

15. The petitioner shall neither stare, stalk, make any gestures, remarks, call, contact, message the victim, either physically, or through phone call or any other social media, nor roam around the victim's home.

16. During the trial's pendency, if the petitioner **repeats** or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, it shall always be permissible to the respondent to apply for cancellation of this bail. It shall further be open for any investigating agency to bring it to the notice of the Court seized of the subsequent application that the accused was earlier cautioned not to indulge in criminal activities. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

17. In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest) that the Government(s) might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse shall entitle the trial Court to order the transfer of money from the petitioner's bank account(s). However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner alone, and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and that voyage was not for any other purpose/function what so ever.

18. Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi/Urdu.

19. In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

20. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

21. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

22. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

23. The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the victim, at the earliest, and not later than two days. In case the victim notices any objectionable behavior or violation of any terms or conditions of this order, the victim may inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

24. *There would be no need for a certified copy of this order for furnishing bonds. Any Advocate for the petitioner can download this order along with the case status from the official web page of this Court and attest it to be a true copy. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.*

The petition stands allowed in the terms mentioned above.

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**Anoop Chitkara,
Judge.**

May 31, 2021 (ks)