

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

ON THE 30th DAY OF NOVEMBER, 2021

BEFORE

HON'BLE MR. JUSTICE VIVEK SINGH THAKUR

CRIMINAL MISC. PETITION (MAIN) Nos. 2181 & 2180 of 2021

Between:-

Cr.M.P(M) NO. 2181 OF 2021

RAKESH KUMAR SON OF SH. DEV
RAJ R/O VILLAGE BHALOLA P.O
PANOH TEHSIL UNA, DISTRICT UNA.
H.P.

..... PETITIONER.

(BY MR. ANUP RATTAN, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH.

.....RESPONDENT

(MR. HEMANT VAID, ADDITIONAL ADVOCATE
GENERAL)

Cr.M.P(M) NO. 2180 OF 2021

SATISH KUMAR SON OF SH.
WATTAN CHAND R/O VILLAGE WARD
NO.3 VPO LOHARLI TEHSIL AMB,
DISTRICT UNA, H.P.

..... PETITIONER.

(BY MR. ANUP RATTAN, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH.

.....RESPONDENT

(MR. HEMANT VAID, ADDITIONAL ADVOCATE
GENERAL)

Whether approved for reporting?

These petitions coming on for order this day, the Court passed the following:-

ORDER

Petitioner has approached this Court seeking bail in case FIR No. 164 of 2021 dated 10.11.2021, registered in Police Station, Gagret, District Una, H.P under Sections 376, 354A, 120-B, 34 of Indian Penal Code (IPC) and Sections 3 (1) (r), 3 (1) (s) of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act (SC & ST Act).

2. Status report stands filed, wherein it is stated that FIR in the present case has been registered on the basis of complaint submitted by the victim/prosecutrix on 10.11.2021 wherein she has stated that she is mother of two children i.e a son and a daughter and that she had been living in the property/land of her father in Jeetpur Bahedi which has been inherited by her after death of her father but after death of her father, her husband had stopped visiting that place and she had been carrying her livelihood by selling milk of two buffaloes kept by her. It has been further stated in the complaint that

she had been taking medicines from the shop of accused-petitioner Satish Kumar for herself and for her children during ailment, and Satish Kumar had been knowing everything about her family life and he allured her to live with petitioner Rakesh Kumar after dissolution of previous marriage by introducing Rakesh Kumar as a Doctor and owner of clinic at village Basal. According to her, they persuaded her by visiting her home for 10-15 times and thereupon she for herself and for future of her children, had agreed to live with petitioner Rakesh. Thereafter on 12.11.2018 petitioners had taken her to Una Court and had got prepared some documents purporting to be papers for solemnizing marriage. Photographs of Court marriage were also snapped. According to the complainant, petitioner-accused Rakesh had stayed for some time in the house of victim, but thereafter he continued to pressurize her to sell everything with assurance that he would be constructing a new and better house for her. On his advice, victim shifted to Basal and constructed a house. It has been alleged in the complaint that by the passage of time accused-petitioner Rakesh Kumar also succeeded to impress the victim to sell her buffalos of worth Rupees Two lacs, ornaments worth Rs.6 lacs with assurance that he would be constructing a house for her and the victim would be enjoying the said property like a queen. It has been further alleged in the complaint that when victim had sold everything then petitioner-

accused Rakesh Kumar had started pressurising her to sell out her land and house, but victim had refused to do so, whereafter Rakesh had started maintaining distance from the victim and had shifted to Jeetpur Behadi and when victim asked him to purchase a buffalo so that she could earn her livelihood, the accused avoided her request on one pretext or the other. Lastly Rakesh Kumar succeeded to convince victim and also prepare a written document with the help of accused Satish Kumar on the pretext that the said document was with respect to one lac Rupees allotted to her for purchase of a buffalo but the document prepared was with respect to alleged settlement purporting payment of Rs.1,00,000/- in a alleged compromise. It is further in the complaint of the victim that petitioner Rakesh Kumar, on 20.7.2021, visited place of her residence alongwith 2-3 unknown persons and started obscene activity and tried to ravish her, but the victim had saved herself with the help of silencer of motorcycle lying in the courtyard. According to the victim accused-petitioner Rakesh Kumar had addressed her by caste and had abused her and had run away from the spot alongwith the persons brought alongwith him. It is allegation of the victim that for three years she has been violated by petitioner-accused Rakesh Kumar and he has also dispossessed her of her property.

3. Learned counsel for the petitioner has not denied the relation with the victim but has placed on record a compromise reduced into writing in khangi Panchayat wherein Rakesh kumar and the victim Lalita have admitted their live in relationship and stay with each other since November, 2018 but they have agreed to part with company of each other w.e.f 22.7.2021 and according to this compromise Rakesh Kumar on his volition has given Rs. One lac as a help to the victim.

4. Learned Additional Advocate General has submitted that petitioners have committed a heinous crime and are not entitled for bail.

5. Learned counsel for the petitioner submits that present case is a case of live-in relationship with acceptance by each other to continue such relation and thereafter parting company of each other on volition and thereafter FIR has been lodged and for extraneous reasons probably for extortion of further money.

6. It is further submitted by the learned counsel for the petitioner that apart from filing the complaint on the basis of which present FIR has been registered in the present case, the petitioner has also filed a complaint under Section 12 of Protection of Woman from Domestic Violence Act, in the Court claiming herself as a legally wedded wife of petitioner Rakesh Kumar, which is pending

adjudication wherein Rakesh Kumar has been summoned and served for his presence in the Court on 2.12.2021. It has further been submitted on behalf of the petitioner that in the aforesaid circumstances, veracity of the allegations of the prosecution is yet to be proved and, as on date, it is evident that present case, at least, is not a case of forcible violation of the victim.

7. Without commenting upon the merits of the case, but taking into consideration the entire facts and circumstance of the case and also taking note of the parameters and factors required to be considered, at the time of considering bail application, I am of the considered view that this is a fit case for enlarging the petitioner on bail, at this stage.

8. Accordingly, petition is allowed and petitioners are ordered to be released on bail in case FIR No. 164 of 2021 dated 10.11.2021, on theirs furnishing personal bonds each in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of the trial Court, within two weeks from today, upon such further conditions as may be deemed fit and proper by the trial Court, including the conditions enumerated hereinafter, so as to ensure presence of petitioners/accused at the time of trial:-

- (i) That the petitioners shall make themselves available to the police or any other Investigating Agency or Court in the present case as and when required;

- (ii) that the petitioners 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 from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) that the petitioners shall not obstruct the smooth progress of the investigation/trial;
- (iv) that the petitioners shall not commit the offence similar to the offence to which he is accused or suspected;
- (v) that the petitioners shall not misuse his liberty in any manner;
- (vi) that the petitioners shall not jump over the bail;
- (vii) that in case petitioners indulge in repetition of similar offence(s) then, their bail shall be liable to be cancelled on taking appropriate steps by prosecution;
- (viii) that the petitioners shall not leave the territory of India without prior permission of the Court.
- (ix) that the petitioners shall inform the Police/Court their contact numbers and shall keep on informing about change in address(es) and contact numbers, if any, in future.

9. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioners as deemed necessary in the facts and circumstances of the case and in the interest of justice and thereupon, it will also be open to

the trial Court to impose any other or further condition on the petitioners as it may deem necessary in the interest of justice.

10. In case the petitioners violate any condition imposed upon them, their 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.

11. 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.

12. 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.

13. Applications are disposed of in aforesaid terms.

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Petitioners are permitted to produce a copy of this judgment, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy.

30th November, 2021
(priti)

(Vivek Singh Thakur),
Judge.