

(2020) 08 SHI CK 0184

High Court Of Himachal Pradesh

Case No: Criminal Miscellaneous Petition (M) No. 1198 Of 2020

Dharmender Kumar

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision: Aug. 19, 2020

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 164, 439
- Indian Penal Code, 1860 - Section 354D(2), 376, 504, 506

Hon'ble Judges: Chander Bhusan Barowalia, J

Bench: Single Bench

Advocate: Ravi Tanta, Azad Kaith, S.C. Sharma, P.K. Bhatti, Kamal Kishore

Final Decision: Disposed Of

Judgement

Chander Bhusan Barowalia, J

1. The matter is taken up through video conference.
2. The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 116 of 2020, dated 01.07.2020, under Sections 376, 504, 506 and 354D(2) IPC, registered in Police Station BSL Colony, Sundernagar, District Mandi, H.P.
3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident 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 him behind the bars for an unlimited period, so he be released on bail.

4. Police report stands filed. As per the prosecution story, on 01.07.2020 the prosecutrix (name withheld) made a written complaint to the police alleging that about a month back, when she was in jungle, grazing the cattle, one Dharmender Kumar (petitioner herein), who is a resident of nearby village, forcibly committed rape upon her and also threatened to do away with her life, in case she divulges the incident to anyone. The petitioner used filthy and abusive language on whatsapp and also tried to degrade the reputation of the prosecutrix by leveling false and baseless imputations that she is a lady of easy virtue. Upon the complaint, so made by the prosecutrix, police registered a case and the investigation ensued. The prosecutrix was medically examined and the scientific samples were preserved. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. Police visited the spot, prepared the spot map and also recorded the statements of the witnesses. On 02.07.2020 the petitioner was arrested and medically examined. The mobile phone of the petitioner was seized and the report of the examination is awaited. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was involved in a serious offence, he has committed serious offence and there is every possibility that in case at this stage he is enlarged on bail, he may flee from justice, as the investigation is still going on.

5. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is permanent resident 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 the petitioner behind the bars for an unlimited period, especially when nothing is to be recovered from the petitioner, his custody is not at all required by the police, so the bail application may be allowed and the petitioner be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence. He has further

argued that in case the petitioner is enlarged on bail, at this stage, he may flee from justice, as the investigation is still underway and there is possibility that he may tamper with the prosecution evidence. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is only 26 years of age, he is permanent resident of the place, neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, nothing is to be recovered from him and his custody is not at all required by the police, so the application be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the age of the petitioner and also that of the prosecutrix, the manner in which the offences are alleged to have been committed by the petitioner, the fact that the petitioner is permanent resident of the place, so neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, he cannot be kept behind the bars for an unlimited period, he is ready and willing to abide by the terms and conditions of bail, in case granted, and also considering the overall material, which has come on record, and without discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour.

Accordingly, the petition is allowed and it is ordered that the petitioner, who has been arrested by the police in case FIR No. 116 of 2020, dated 01.07.2020, under Sections 376, 504, 506 and 354D(2) IPC, registered in Police Station BSL Colony, Sundernagar, District Mandi, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of `50,000/- (rupees fifty thousand) with one surety in the like amount to the satisfaction of the learned Trial Court.

The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner 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.

9. In view of the above, the petition is disposed of. Copy dasti.