

Prem Chand Vs State Of Himachal Pradesh

Court: High Court Of Himachal Pradesh

Date of Decision: July 3, 2020

Acts Referred: Code Of Criminal Procedure, 1973 " Section 439
 Indian Penal Code, 1860 " Section 120B, 323, 344, 363, 366, 368, 376, 506
 Protection Of Children From Sexual Offences Act, 2012 " Section 6, 17

Hon'ble Judges: Vivek Singh Thakur, J

Bench: Single Bench

Advocate: Chandernarayan Singh, Gaurav Sharma

Final Decision: Disposed Of

Judgement

Vivek Singh Thakur, J

1. This petition has been preferred, seeking regular bail, under Section 439 Criminal Procedure Code (in short Cr.P.C.), in case FIR No.48 of 2017,

dated 28.07.2017, registered under the provisions of Sections 363, 366, 368, 323, 376, 344, 506 and 120-B of the Indian Penal Code (in short

IPC) and Sections 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act), in Police Station

Panchrukhi, District Kangra, H.P.

2. Status report stands filed.

3. As per status report, FIR has been lodged by Anil Kumar, who is father of the victim, stating that his eldest daughter having date of birth

03.12.2000, educated upto plus two Class, had left house on 23.06.2017 on the pretext that she had to collect certificate from Shivalik Radiance Public

School, Panchrukhi and on the said day, she stayed in the house of her maternal uncle at Thakurdwara and had returned back to Panchrukhi and

talked with her mother, however, after 1.30 p.m. no talk had taken place with her and till 28.07.2017, i.e. uptill lodging complaint she was not traceable

despite searching everywhere and complainant had come to know that his daughter had been kidnapped by one Amit son of Prem Lal on his

Motorcycle with intention to marry her.

4. It is also stated in the status report that despite all-out efforts Amit and Victim were not traceable and, therefore, after four months untraced report

was prepared on 25.01.2019. Further that later on in December 2019, a copy of Cr.MMO No.759 of 2019 was received in Police Station through Law

Officer, wherein accused Amit and Victim were petitioners and they had disclosed therein that they had married on 17.01.2019 and the family

members of victim were harassing family of the boy and, therefore, prayer in this petition was made to quash FIR lodged by father of the victim.

5. Further, it is stated in the status report that on 4. 03.2020, victim came to Police Station alongwith her parents and had stated that on 24.06.2017

accused Amit Kumar had kidnapped her from Panchrukhi and offered some cold-drink on the way, because of which, she had lost her consciousness

and after regaining consciousness, she had found herself detained in a room, where accused Amit Kumar had violated her person and for some days

she was kept in a room and thereafter taken to Bangalore and she could not identify the places where she was taken and for a considerable long time

she was kept at Bangalore in a closed room and later on under the pressure and fear of accused Amit Kumar and his father Prem Chand, she got

married with accused on 17.01.2019 at Arya Samaj Mandir, Harit Vihar, Delhi.

6. According to status report, on the basis of statement of victim, she was subjected to medical examination and thereafter Sections 368, 376, 323, 344,

506 and 120-B IPC read with Sections 6 and 17 of POCSO Act, were also added. During investigation, it has been found that victim had solemnized

marriage with accused on 17.01.2019 at Arya Samaj Mandir, Harit Vihar, Delhi and statement to that effect has also been recorded in the Court of

Sub-Divisional Magistrate, Delhi, on 21.01.2019. It is also alleged in the status report that accused was continuously threatening the victim and his

father was always pressurizing victim to marry with his son, failing which, he was threatening to kidnap her younger sister also and to defame her, her

parents and relatives also and on her refusal to accept the proposal, she was used to be beaten and abused and because of fear she was bearing every

harassment by accused and when she attained 18 years of age, then she was married with accused Amit Kumar by accused Prem Chand at Delhi

and she had filed an affidavit in the High Court of Himachal Pradesh under pressure of accused.

7. Lastly, it is also stated that victim had disclosed that for a considerable long time, she was detained in a room and thereafter she was employed in a

Showroom at Bangalore, but accused Amit Kumar, doubting her character, started harassing and beating her. Whereupon, she contacted her parents

through phone of persons known to her and after hearing her tale of sorrow, her parents had booked an Air Ticket for her up to Chandigarh and

wherefrom on 21.01.2020, she came to house of her parents.

8. Record of Cr.MMO No.759 of 2019 has also been made available by the Registry in sequel to order passed on previous date. Filing of this petition

and swearing of affidavit filed therewith dated 13.09.2019, wherein it has been stated that she had left her house because of ill behaviour of her

parents and was residing with her friend and no one had allured or kidnapped her and she had contracted marriage with Amit Kumar after attaining

the age of 18 years with her free will, consent and without any pressure and that her husband and in-laws were having danger of life and property

from her parents and relatives are also admitted facts.

9. The reason for not reporting the matter to anyone, assigned at the first instance by the victim, is that she was detained in a room and was not

allowed to meet anybody. Whereas, later on, she has also disclosed that she was employed in a Showroom at Bangalore and thereafter bitterness had

developed in relation of couple on account of doubt by her husband with respect to her character. Detaining in the room and employment in the

Showroom are two things, which are self contradictory to each other. There may be possibility of ill-treatment by husband and/or in-laws, but as to

whether any offence, as alleged in the FIR is made out or not, is subject matter of the investigation. Material documents available on record, are

talking about two stories contrary to each other but with common fact that solemnization of marriage by victim with accused Amit Kumar has not

been denied, rather admitted in no uncertain words.

10. It is also submitted by learned Deputy Advocate General that accused Amit Kumar is absconding and, therefore, also present petitioner, who is

father of accused Amit Kumar, is not entitled for bail.

11. Petitioner aged 60 years, is a retired Teacher and having permanent residence in Village Dharehar in District Kangra and is ready to abide by the

conditions imposed by the Court. In any case, for ensuring arrest of a son, detention of father is never permissible.

12. Without commenting on merit on plea of either party, considering entire facts and circumstances, I find that it is a fit case, where petitioner can be

enlarged on bail at this stage. Accordingly, petitioner is directed to be enlarged on bail in case FIR No.48 of 2017, under the provisions of Sections 363,

366, 368, 376, 323, 344, 506 and 120-B IPC and Sections 6 and 17 of POCSO Act, subject to furnishing his personal bond in the sum of Rs. 50,000/-

with one surety in the like amount to the satisfaction of the trial Court/Special Judge, within two weeks from today, also subject to following further

conditions:-

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

(ii) that the petitioner 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/her from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to

overawe or influence or intimidate the prosecution witnesses;

(iii) that he shall not obstruct the smooth progress of the investigation/trial;

(iv) that the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

(v) that the petitioner shall not misuse his liberty in any manner;

(vi) that the petitioner shall not jump over the bail; and

(vii) that he shall keep on informing about the change in addresses, landline number and/or mobile number, if any, for his availability to Police and/or

during trial.

13. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioner as deemed

necessary in the facts and circumstances of the case and in the interest of justice.

14. In case the petitioner violate any conditions imposed upon him, his 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.

15. Trial Court/Special Judge, 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.

16. 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. Petition stands disposed of in the aforesaid terms.

17. The trial Court shall not insist for certified copy of the order and can verify the same from the High Court Website and from the Registry before

accepting the bail bonds to be furnished by the petitioner. Petitioner is at liberty to produce the downloaded copy of the order from the High Court

Website.

18. Record of Cr.MMO No.759 of 2019 be returned to the concerned Branch.