

Bhagat Ram Vs State Of H.P

Court: High Court Of Himachal Pradesh

Date of Decision: May 31, 2021

Acts Referred: Code Of Criminal Procedure, 1973 " Section 154, 164, 173(2), 439

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Manoj Pathak, Nand Lal Thakur

Final Decision: Dismissed

Judgement

Anoop Chitkara, J

1. The petitioner, incarcerated upon his arrest, for allegedly committing rape upon a deaf and dumb girl, has come up before this Court under Section

439 of CrPC, seeking bail.

2. Earlier, the petitioner had filed several petitions under Section 439 Cr.PC before the concerned Sessions Court, but the same were dismissed. After

that, petitioner filed two bail applications before this Court, being Cr.MP(M) No.1195 of 2020, which was dismissed as withdrawn and Cr.MP(M)

No.71 of 2021 which was dismissed.

3. Search of website of this Court discloses that the co-accused had also filed the following bail petitions before this Court:

4. In Para 8 of the bail application, the petitioner declares having no criminal history. The status report also does not mention any criminal past of the

accused.

5. Briefly, the allegations against the petitioner are that on 10.2.2018, the police officials received an information about rape of a deaf and dumb girl.

On receiving such information, the police officials reached her village. On further inquiry, they were able to trace the brother of the victim and

recorded his statement under Section 154 Cr.PC, which led to the registration of the FIR, mentioned above.

6. The brother of the victim informed the police that they are three brothers and one sister, who is deaf and dumb. Yesterday, there was a wedding in

their village. He alongwith his father had gone to attend such wedding. His sister was alone at home. At 1:00 O'Clock in the night, when he

returned home, he noticed that the door of the home was opened. He heard some sound of coughing from inside the room where his deaf and dumb

sister sleeps. After that, he entered the room and when he switched on the light, he noticed that Bhagat Ram was lying upon his sister and was doing

sexual intercourse with his sister. The moment Bhagat Ram noticed him, he came out and then they had a scuffle, after which, he caught hold of the

accused and confined him in a room. Thereafter, he called the villagers, but in the meantime, Bhagat Ram fled away after opening the window. After

registration of the FIR, the police took the victim for her medical examination in Civil Hospital, Nerwa. The Doctor preserved her scientific evidence

for DNA profiling. After that, the police arrested the accused and also obtained his genetic material for DNA profiling. Subsequently, the Investigator

sent both genetic materials of victim and accused to Forensic Science Laboratory, Junga for scientific analysis.

7. The Investigator also produced the victim before JMJC, Chopal for recording her statement under Section 164 Cr.PC and subsequently the police

also got her psychiatric test at IGMCH, Shimla. The Forensic Science Laboratory could not deduct any semen on the clothes and pubic hairs of the

victim, however, blood was deducted on the vaginal slides of the victim, which was insufficient for further examination.

Thus, in the entirety, the Forensic Science Laboratory did not deduct any semen from the evidence and the blood recovered was inconclusive for any

findings.

8. Finally, the Doctor opined that there was nothing suggestive for recent sexual assault. Subsequently, the police initiated prosecution and filed report

under Section 173(2) Cr.PC and the trial is going on.

9. Mr. Manoj Pathak, learned counsel for the petitioner contends that further incarceration before the proof of guilt would cause grave injustice to the

petitioner and his family. Learned counsel has read medical evidence from his file. Learned Additional Advocate General, submits that they have filed

status report. Although, report of the Doctor did not corroborate the version of the victim, still charges have been framed against the accused-

petitioner and the most important evidence would be the statement of the victim recorded before JMJC under Section 164 Cr.PC as well as

psychiatric test report, which has not been placed before this Court by the petitioner.

10. Ld. Counsel for the petitioner contends that reading of the statement of Doctor who had medically examined the victim would make out a case for

bail because nothing incriminating has come in his statement recorded on oath.

11. On the contrary, the State contends that the Police have collected sufficient evidence against the bail petitioner and the co-accused. Another

argument on behalf of the State is that the crime is heinous, the accused is a risk to law-abiding people, and bail might send a wrong message to

society.

REASONING:

12. Although Mr. Manoj Pathak, Ld. Counsel for the petitioner argued that in the statement of the doctor who had medically examined the victim,

nothing incriminating has come. Still, to adjudicate the submissions made by Ld. Counsel for the petitioner, it would be necessary to refer to all the

evidence collected in the investigation, and the statements of all the witnesses who have been recorded.

13. The allegations in the case are serious and offence heinous. To decide the bail petition on merits would require this Court to peruse the evidence

collected by the prosecution, and the statements of all the witnesses who have been recorded. The Counsel of the accused receives all these

statements during the trial. No ground has been pleaded or explanation offered that constrained the petitioner from filing it with the petition. Thus, the

Court cannot decide the bail petition.

14. Given above, the petition is dismissed, reserving liberty to file a new petition on the same cause of action or different grounds by annexing a copy

of the police report, etc.