

MANU/HP/0236/2021

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

Cr. M.P. (M) No. 567 of 2021

Decided On: 09.04.2021

Appellants: **Nasrin**

**Vs.**

Respondent: **State of H.P.**

**Hon'ble Judges/Coram:**

*Vivek Singh Thakur, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: Rajesh Kumar Parmar, Advocate*

*For Respondents/Defendant: Raju Ram Rahi, Deputy Advocate General*

**Case Category:**

CRIMINAL MATTERS - CRIMINAL MATTERS RELATING TO BAIL/INTE  
BAIL/ANTICIPATORY BAIL AND AGAINST SUSPENSION OF SENTENCE

**DECISION**

**Vivek Singh Thakur, J.**

**1.** By way of this petition, petitioner is seeking regular bail under Section 439 Code of Criminal Procedure (in short 'Cr.P.C.'), in case FIR No. 34 of 2021, dated 05.03.2021, registered in Police Station Sadar, Shimla, H.P., under Sections 363, 366A, 370(4), 506 and 120B of the Indian Penal Code (in short 'IPC').

**2.** Status report stands filed, wherein it is stated that on 05.03.2021 victim, aged about 15 years, who is studying in Class 9th, had left her home at 9.30 a.m. to attend her school i.e. Sanatan Dharam Senior Secondary School, Ganj Bazaar, Shimla, and when she did not return home in the evening, her father, on inquiry, had received information that on that day students were not called in the school. With aforesaid details, father of the victim had approached Police Station Sadar, Shimla, with suspicion that someone had abducted her daughter after alluring and misleading her.

**3.** As per status report, on complaint of father of the victim, case under Section 363 IPC was registered and investigation was started. During investigation, location of mobile number of victim was found in Haryana leading to the clue to the police that victim was travelling towards Delhi. Whereupon, police party was sent to Delhi in search of victim and it was also found that victim was having too many talks on two mobile numbers (96398-21301 and 62382-27896), therefore, CDRs and location of those two numbers were also requisitioned.

**4.** Investigating Officer, on 06.03.2021, after reaching in Police Station Badarpur, Delhi, started investigation and found that last location of victim, on 05.03.2021 at about 8.19 p.m., was found at Panipat and thereafter her phone was found switched off. From CDRs of two mobile numbers, Investigating Officer had contacted on some mobile numbers, which were found in contact of these two mobile numbers and during this exercise, one mobile number 95606-42747 was found to be of one Jatin Malik, who, in

response, informed the Investigating Officer that he is having a Maruti Car bearing registration No. DL9CAP-3819 and on 05.03.2021 he had gone to Ambala from Delhi to drop a passenger and at Ambala a girl had met him, who had disclosed that she was going to Delhi, whereupon, when he was taking that girl to Delhi alongwith him and had reached near Panipat, mobile phone of that girl had switched off and for that reason that girl had contacted someone through his (Jatin's) mobile and the person, with whom she had talked, had disclosed his name to him (Jatin) as Zuber and further that Zuber had told him that one boy will send him location from mobile number 96671-56859 and had asked him (Jatin) to drop the victim on that location and thereafter on receiving location of Badarpur, Delhi from the aforesaid number, he had dropped victim at Badarpur NTPC Chowk at about 10.30 p.m. on 05.03.2021, wherefrom a boy had taken her.

**5.** During investigation, it was revealed that the boy, who had sent the location, was one Ibrahim residing at Badarpur in a room rented in a building known as 'Akash'. During search for Ibrahim, his room was found locked and it came in notice that he was hiding in some other house in the room of his friend, wherefrom he was apprehended and taken to Badarpur Police Station and shown to Jatin, and Jatin had identified him the same boy to whom he had handed over the girl on 05.03.2021.

**6.** During interrogation, Ibrahim had disclosed that on 05.03.2021 he had received calls from Zuber and Nazim @ Sameer, the boys belonging to his village, who were working with him earlier at Delhi, but presently Zuber was at Chennai, whereas, Nazim @ Sameer was in Kerala. He had further revealed that both of them had informed him that one 'X' named girl (victim) would come in some vehicle at Badarpur NTPC Gate and they had asked him to take her to his quarter and further that on request of these two persons he had taken victim from Badarpur NTPC Gate to his room in 'Akash' building and had kept her in his room on 05.03.2021 and 06.03.2021 and on 07.03.2021, he had taken the victim to Dhakia and as he was anticipating that police would be in his search, therefore, he was not sleeping in his room but was staying with his friend. Ibrahim had also disclosed that victim, at the time of investigation, was in Dhakia and his elder brother Istiyaak, who is serving at Delhi and living with him in the same room, had also gone to Village Sahaspur near Dhakia and on his message he would come to Badarpur alongwith victim. Ibrahim had also disclosed that Nazim @ Sameer was intending to marry victim and Nazim @ Sameer and Zuber had called victim to Delhi, but Zuber was at that time at Chennai and Nazim @ Sameer was in Kerala and, therefore, victim was housed with him.

**7.** On 08.03.2021 at about 09.30 a.m. Istiyaak brother of Ibrahim and Nasrin (petitioner), on message, had brought victim to Police Station Badarpur, Delhi, who was identified by her father and thereafter victim had identified the places where she was dropped from the car and also the room of Ibrahim.

**8.** On 10.03.2021, statement of victim was also recorded under Section 164 Cr.P.C. and considering the circumstances revealed, during investigation and from statement of victim, Sections 366A, 370(4), 506 and 120B IPC were also added in the case. As per record age of victim is 14 years 11 months.

**9.** During investigation in custody, Ibrahim had identified house where he had handed over victim to Nasrin and her husband Ibad. Nasrin and her husband were directed to join investigation in their area's Police Station at Dhidholi. On 13.03.2021 houses of Zuber and Nazim @ Sameer were searched where they were not found at home. In none of these houses any male was found, and Mehsar mother of Zuber and Jafree mother of

Nazim @ Sameer had also denied any knowledge regarding whereabouts of their respective sons. Nasrin and her husband did not turn up to the Police Station and on inquiry it was found that they had locked their house and had fled. Nasrin did not return her home during day and night of 13.03.2021, whereupon Investigating Officer however announced that police party is going back to Himachal Pradesh, but, in fact, stayed at a distant place, whereupon, believing that Himachal Police had gone back, Nasrin came back to her house on 14.03.2021 at 9.30 a.m. and on receiving that information, police party reached her home and brought her to Police Station for interrogation and on the same day, at about 2.10 p.m., she was arrested by giving due information to Rahees, Pradhan of Dhakia Panchayat.

**10.** During investigation, Nasrin had disclosed that Ibrahim had brought the minor victim to her house on 07.03.2021, and, on the mobile of Ibrahim, her brother Nazim @ Sameer had also talked with her and her husband, and he and her husband had kept minor in their home at the behest of Nazim @ Sameer, and despite having knowledge about age of victim, circumstances in which victim had reached there and religion of victim, they did not report the matter to the police and when during night they came to know about that staying of victim with them had come in the knowledge of police, Istiyaak brother of Ibrahim had come to their house to take victim to Delhi then, firstly they had resisted, but later on had agreed to send victim to Delhi.

**11.** During investigation, Nasrin had expressed her ignorance about mobile number and address of her brother Nazim @ Sameer and also mobile number of her husband and whereabouts of her husband. At present, Nasrin is in judicial custody.

**12.** Learned Deputy Advocate General has submitted that co-accused Ibad, who is husband of petitioner is not submitting himself to the Investigating Agency for interrogation and petitioner was actively playing role for hiding a minor girl (victim) and had been resisting handing over the girl to the police. Further that keeping in view the role of the petitioner and the fact that main accused Nazim @ Sameer is her brother and she under dictates of her brother had been facilitating the commission of offence, she does not deserve to be enlarged on bail as on her release there is every possibility of her fleeing from justice like her husband.

**13.** Learned counsel for the petitioner has submitted that petitioner is a woman having her family and a permanent home in Village Dhakia, District Amroha, U.P., and there is no possibility of her fleeing from justice and further that petitioner is also ready to furnish local surety for ensuring her presence during trial.

**14.** Learned counsel for the petitioner has also submitted that present case is not a case of conspiracy, but a simple story of love affair where victim herself had left her house and reached Ambala, wherein petitioner had no role to play and even thereafter till handing over of victim to petitioner (Nasrin) by Ibrahim, and acceptance of the girl in her house by her after having talks with her brother Nazim @ Sameer on the mobile phone of Ibrahim itself indicates that she was not having knowledge about activities of her brother and intention of her brother or others involved in the case and her resistance not to hand over the girl to Istiyaak was also for having concern to the safety of the victim. It is also stated that even if prosecution case is admitted to be proved in all respects, there is no overt act on the part of the petitioner for commission of offence and when a minor girl had reached her house, petitioner was having no other option but to give shelter to the minor girl and further that petitioner is a woman of age of 40 years having five children and youngest child is of two years of age and is dependent on breasts feeding of the petitioner. Therefore, he has prayed for enlarging the

petitioner on bail, particularly keeping in view the provisions of Section 437 of Cr.P.C.

**15.** No doubt, Section 437 Cr.P.C. deals with situation when accused is produced before the Magistrate and Section 439 Cr.P.C. devolves special power on the High Court and/or Court of Sessions regarding the bail and both Sections deal with different situations in different Courts, but it is also settled position that provisions contained in Sections 437 and 438 Cr.P.C. can also be taken into consideration at the time of considering bail under Section 439 Cr.P.C. In fact, Section 437 Cr.P.C. refrains the Court, other than the High Court or Court of Sessions, from releasing a person, accused or suspect of commission of any non-bailable offence, who is arrested or detained for without warrant, or appears, or is produced before such Court and there appears reasonable ground for believing that he is guilty of an offence punishable with death, or imprisonment for life. However, an exception has been carved out enabling such Court to release such a person on bail, in case, such person is under the age of sixteen years, or is a woman, or is sick, or infirm, with further provision that no such person shall be released without giving an opportunity of hearing to the Public Prosecutor, which means that the persons under the age of sixteen years, or woman, or sick, or infirm are also not to be released in all cases, but after considering facts and circumstances brought in the notice of the Court by Public Prosecutor. Therefore, a woman accused cannot claim her entitlement for bail only for her womanhood, but discretion has been given to the Court to decide the bail application of a woman after considering facts and circumstances of the case, particularly nature and gravity of the offence and role of the woman in commission thereof.

**16.** In the given facts and circumstances of present case, case of the petitioner can be considered differently than the other accused involved in the case and some of them have been arrested and rest are absconding.

**17.** Considering entire facts and circumstances brought before me with respect to role of petitioner coupled with the fact that she is a mother of an infant child dependent upon her breasts feeding, I am of the opinion that at this stage, petitioner is entitled to be enlarged on bail.

**18.** Accordingly, petition is allowed and petitioner is ordered to be released on bail in case FIR No. 34 of 2021 dated 05.03.2021, registered in Police Station Sadar, Shimla H.P., on her furnishing personal bond in the sum of ' 1,00,000/- with two sureties in the like amount, out of which one surety, as undertaken, shall be local surety, 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 the presence of petitioner/accused at the time of trial and also subject to following conditions:-

(i) That the petitioner shall make herself 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 her from disclosing such facts to Court or to any police officer or tamper with the evidence. She shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

(iii) that the petitioner 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 she is accused or suspected;

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

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

(vii) that in case petitioner indulge in repetition of similar offence(s) then, her bail shall be liable to be cancelled on taking appropriate steps by prosecution; and

(viii) that the petitioner shall not leave the territory of India without prior permission of the Court.

(ix) that the petitioner shall inform the Police/Court her contact number and shall keep on informing about change in address and contact number, if any, in future.

**19.** 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 and thereupon, it will also be open to the trial Court to impose any other or further condition on the petitioner as it may deem necessary in the interest of justice.

**20.** In case the petitioner violates any condition imposed upon her, her 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.

**21.** 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.

**22.** 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.

**23.** Petition is disposed of in aforesaid terms.

**24.** Copy dasti.

**25.** Petitioner is 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.

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