

**In the High Court of Himachal Pradesh at Shimla**

(Before [Vivek Singh Thakur](#), J.)

Mohammad Zubair ... Petitioner;

*Versus*

State of Himachal Pradesh ... Respondent.

Criminal Misc. Petition (Main) No. 2105 of 2021

Decided on December 9, 2021, [Reserved on : 7.12.2021]

**Advocates who appeared in this case:**

Shri Rajesh Kumar Parmar, Advocate

Shri Raju Ram Rahi, Deputy Advocate General

The Order of the Court was delivered by

**[Vivek Singh Thakur, J.](#)**— By way of this petition, petitioner is seeking regular bail under Section 439 of the Code of Criminal Procedure (in short 'Cr.P.C.'), in case FIR No. 34 of 2021, dated 5.3.2021, registered in Police Station Sadar, Shimla, H.P., under Sections 363, 366A, 370(4), 506, 201 and 120B of the Penal Code, 1860 (in short 'IPC').

**2.** The petitioner was arrested on 8.3.2021 and, after remaining in police custody, now he is in judicial custody.

**3.** Status report(s) stand filed, wherein it is stated that on 5.3.2021 victim, aged about 15 years, who is studying in Class 9<sup>th</sup>, 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 his daughter after alluring and misleading her.

**4.** It is further stated in Status Report that on complaint of father of the victim, case under Section 363 IPC was registered and investigation 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.

**5.** Investigating Officer, on 6.3.2021, after reaching in Police Station Badarpur, Delhi, started investigation and found that last location of victim, on 5.3.2021 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 5.3.2021 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 the victim at Badarpur NTPC Chowk at about 10.30 p.m. on 5.3.2021, wherefrom a boy had taken her.

**6.** During investigation, it was revealed that the boy, who had sent the location, was co-accused 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 5.3.2021.

**7.** During interrogation, Ibrahim had disclosed that on 5.3.2021 he had received calls from petitioner 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 the victim from Badarpur NTPC Gate to his room in 'Akash' building and had kept her in his room on 5.3.2021 and 6.3.2021 and, on 7.3.2021, 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. Co-accused Ibrahim had also disclosed that Nazim @ Sameer was intending to marry victim, and Nazim @ Sameer and petitioner 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.

**8.** On 8.3.2021 at about 9.30 a.m. Istiyaak (brother of Ibrahim) and Nasrin, 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.

**9.** On 10.3.2021, 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.

**10.** During investigation, it has also come that Nazim @ Sameer had been in contact of victim since last five months, after sending her friend requests on FACEBOOK and thereafter he was in regular contact of the victim and the petitioner was an active participant in commission of offence.

**11.** Learned Deputy Advocate General has submitted that Call Detail Record (CDR) of co-accused Nazim, petitioner Zuber and co-accused Ibrahim establishes that petitioner had not only facilitated the commission of offence but also was an active party in trafficking the victim from one place to other. To establish participation of petitioner in conspiracy to commit the offence, he has referred to CDR from 5.3.2021 to 6.3.2021, indicating that petitioner was

in continuous contact with main accused Mohammed Nazim and Ibrahim and during this period there are more than 100 calls between them. It has been further submitted that there was a big conspiracy to traffic the victim to Dubai or any other foreign country via Kerala or otherwise, wherein petitioner has active role and, therefore, he does not deserve to be enlarged on bail as on his release there is every possibility of his fleeing from justice and it would be very difficult to apprehend him. So, the learned Deputy Advocate General has prayed for dismissal of the bail application.

**12.** Learned counsel for the petitioner has submitted that the petitioner had been making arrangement for safe arrival of the girl, but on request of main accused Mohammad Nazim, and, according to him, his conduct establishes the said fact, as he had contacted a girl Sonali for safe custody of victim with her, but she had refused to accommodate during odd hours of the night and, in these circumstances, he had to contact Ibrahim for safety of the victim and number of calls between the petitioner and main accused are also the reason that petitioner was worried about the well being of the girl and, therefore, conduct of the petitioner cannot be considered for concluding that petitioner was party to the conspiracy of abducting the girl with ulterior motive or ill intention. According to learned counsel, had it not been so, the girl would never have been kept in the family of sister of Nazim.

**13.** Learned counsel for the petitioner has further submitted that there is no overt act on the part of petitioner in leaving of the house by the victim, rather victim had voluntarily left her house and when she reached Delhi, the petitioner had only helped her by providing shelter to her. It is further submitted by the learned counsel that investigation in present case is complete and challan has been presented in the Court. He has further submitted that in case the petitioner is ordered to be released on bail, the petitioner is ready to furnish local surety and also undertakes to abide by all the conditions that may be imposed by the Court.

**14.** Learned Deputy Advocate General has submitted that the petitioner alongwith main accused has planned in such a clever way that physically it is not visible that they have any role in the commission of offence, as they managed to believe the leaving of house by the girl to be an act committed by her at her own volition and when the girl reached Ambala, they managed

taxi of a third person for her arrival at Delhi and the petitioner came in picture only at Delhi at the time of receiving the girl, leaving no evidence available to disclose the role of petitioner and other co-accused in trafficking the girl from Shimla to Delhi and their plan to traffic her to a foreign country could not be materialized for minority of the girl. It has further been submitted by learned Deputy Advocate General that police has obtained audio recording of telephonic conversation between petitioner Zuber and Sonali, wherein petitioner Zuber had been found saying that he has a plan to traffic the girl to Dubai. It has been further stated that the conversion has been found to be genuine and specimen of voice sample of petitioner Zuber has been found similar to the questioned voice in the audio recording. Therefore, according to learned Deputy Advocate General, petitioner's conduct reflects that he is one of main conspirators and was knowing the result of his participation in the commission of offence.

**15.** Keeping in view the nature, gravity and seriousness of offence, for the manner in which victim has been managed to be transported/travelled from Shimla to a remote village of Uttar Pradesh in an organized manner, it has been prayed by the learned Deputy Advocate General that bail application deserves to be dismissed.

**16.** Undoubtedly, as pleaded by learned counsel for the petitioner, bail is rule and jail is exception. But, at the same time, this rule does not mean that in every case bail is to be granted in all eventualities. The Supreme Court, in its various pronouncements, as also referred by this Court in *State of Sandeep v. State of Himachal Pradesh*, reported in 2019 (1) Shim.LC 263, has culled out various factors and parameters to be taken into consideration at the time of deciding the bail applications, which also include denial of bail based on those factors and principles. The general rule 'bail but not jail' cannot be used as a weapon to render the provisions, empowering the Court to reject the bail redundant and/or as a guiding factor to enlarge an accused on bail, in every case.

**17.** In present case, case in the trial Court is fixed for consideration of framing of charges on 27.12.2021. Petitioner has been found actively involved in managing travel of the girl, her stay arrangement with the help of Ibrahim and shifting her to a remote village in Uttar Pradesh. Therefore, at this stage, release of the petitioner on bail would have adverse

impact on the society, encouraging the law-breakers involved in commission of offence of trafficking the women within and out of country.

**18.** Considering the material facts and principles, necessary to be considered, at the time of granting bail, as propounded by the Supreme Court, I do not find it a fit case to enlarge the petitioner on bail, at this juncture.

**19.** Any observation made hereinabove shall have no bearing on the merits of the case and is confined only for the purpose of disposal of this bail application.

**20.** The bail application is dismissed and disposed of.