

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

**Cr.MP(M) No. 67 of 2021**

**Reserved on: 19<sup>th</sup> January, 2021.**

**Date of Decision: 20<sup>th</sup> January, 2021.**

**Dinesh Kumar**

**...Petitioner.**

**Versus**

**State of H.P.**

**...Respondent.**

**Coram:**

**The Hon'ble Mr. Justice Anoop Chitkara, Vacation Judge.**

**Whether approved for reporting?<sup>1</sup> NO**

**For the petitioner: Mr. Onkar Jairath & Mr. M.A. Safee, Advocates.**

**For the respondent: Mr. Ajay Vaidya, Sr. Addl. A.G. with Mr. Bhupender Thakur, Mr. Gaurav Sharma, Deputy Advocates General and Mr. Rajat Chauhan, Law Officer.**

**THROUGH VIDEO CONFERENCE**

FIR No.	Dated	Police Station	Sections
181/20	7.11.2020	Paonta Sahib, District Sirmaur, H.P.	376 IPC & 3(i)(w) (ii) SCST Act

**Anoop Chitkara, Vacation Judge.**

The petitioner, incarcerated upon his arrest for establishing sexual relation with a female aged 30 years and belonging to Scheduled Caste community, under the false promise of marriage, has come up before this Court seeking regular bail on the ground that he is innocent.

2. Earlier, the petitioner had filed a petition under Section 439 CrPC before the concerned Special Judge. However, vide order dated 12.1.2021, Learned Special Judge, Sirmaur at Nahan, HP, dismissed the petition.

3. 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.

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**Whether reporters of Local Papers may be allowed to see the judgment?**

4. Briefly, the allegations against the petitioner, which led to the registration of the FIR, mentioned above, are that on 7.11.2020, the Police official received a written complaint from the victim. She complained that accused Dinesh Kumar stayed with her for four years under the promise of marriage and continued to have sexual relations during this entire period on uncountable numbers. After that he also promised the victim to solemnize Court Marriage in the year 2021, however, discreetly engaged with some other girl. When confronted, he told the victim that such engagement was because of the family pressure and he was unhappy with the same. Even after that he continued to have coitus with her. He would also give her contraceptive pills. Last time, he established coitus with her on 1.11.2020.

5. Learned Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. While opposing the bail, the alternative contention on behalf of the State is that if this Court is inclined to grant bail, such a bond must be subject to very stringent conditions.

7. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborate and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the evidence produced, the Courts can impose restrictive conditions.

8. The age of the victim is 30 years. She continued to have coitus with him for four years. Even when she came to know that he has been engaged with some other girl, she believed him and continued to have sex with him. Such conduct would not justify further incarceration of the petitioner.

9. An analysis of entire evidence does not justify further incarceration of the accused, nor is going to achieve any significant purpose. Without commenting on the merits of the case, the stage of the investigation and the period of incarceration already undergone would make out a case for bail.

10. In the facts and circumstances peculiar to this case, the petitioner makes out a case for release on bail.

11. Given the above reasoning, the Court is granting bail to the petitioner, subject

to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.

**12.** In **Manish Lal Shrivastava v State of Himachal Pradesh**, CrMPM No. 1734 of 2020, after analysing judicial precedents, this Court observed that any Court granting bail with sureties should give a choice to the accused to either furnish surety bonds or give a fixed deposit, with a further option to switch over to another.

**13.** The petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Twenty-five thousand (INR 25,000/-), and shall furnish two sureties of a similar amount, to the satisfaction of the Judicial Magistrate having the jurisdiction over the Police Station conducting the investigation, and in case of non-availability, any Ilaqa Magistrate. Before accepting the sureties, the concerned Magistrate must satisfy that in case the accused fails to appear in Court, then such sureties are capable to produce the accused before the Court, keeping in mind the Jurisprudence behind the sureties, which is to secure the presence of the accused.

**14.** In the alternative, the petitioner may furnish aforesaid personal bond and fixed deposit(s) for Rs. Twenty-five thousand only (INR 25,000/-), made in favour of "Chief Judicial Magistrate, District Kangra, H.P.,"

- a)** Such Fixed deposits may be made from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., Bank of America, Chase, HSBC, City Bank, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, etc., with the clause of automatic renewal of principal, and liberty of the interest reverting to the linked account.
- b)** Such a fixed deposit need not necessarily be made from the account of the petitioner and need not be a single fixed deposit.
- c)** If such a fixed deposit is made in physical form, i.e., on paper, then the original receipt shall be handed over to the concerned Court.
- d)** If made online, then its printout, attested by any Advocate, and if possible, countersigned by the accused, shall be filed, and the depositor shall get the online liquidation disabled.
- e)** The petitioner or his Advocate shall inform at the earliest to the concerned branch of the bank, that it has been tendered as surety. Such information be sent either by e-mail or by post/courier, about the fixed deposit, whether made on paper or in any other mode, along with its number as well as FIR number.
- f)** After that, the petitioner shall hand over such proof along with endorsement to the concerned Court.
- g)** It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. It shall also be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa.

**h)** Subject to the proceedings under S. 446 CrPC, if any, the entire amount of fixed deposit along with interest credited, if any, shall be endorsed/returned to the depositor(s). Such Court shall have a lien over the deposits up to the expiry of the period mentioned under S. 437-A CrPC, 1973, or until discharged by substitution as the case may be.

**15.** The furnishing of the personal bonds shall be deemed acceptance of the following and all other stipulations, terms, and conditions of this bail order:

**a)** The petitioner to execute a bond for attendance to the concerned Court(s). Once the trial begins, the petitioner shall not, in any manner, try to delay the proceedings, and undertakes to appear before the concerned Court and to attend the trial on each date, unless exempted. In case of an appeal, on this very bond, the petitioner also promises to appear before the higher Court in terms of Section 437-A CrPC.

**b)** The attesting officer shall, on the reverse page of personal bonds, mention the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), e-mail (if any), and details of personal bank account(s) (if available), and in case of any change, the petitioner shall immediately and not later than 30 days from such modification, intimate about the change of residential address and change of phone numbers, WhatsApp number, e-mail accounts, to the Police Station of this FIR to the concerned Court.

**c)** The petitioner shall not influence, browbeat, pressurize, make any inducement, threat, or promise, directly or indirectly, to the witnesses, the Police officials, or any other person acquainted with the facts of the case, to dissuade them from disclosing such facts to the Police, or the Court, or to tamper with the evidence.

**d)** The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer; and shall cooperate with the investigation at all further stages as may be required. In the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail. Whenever the investigation occurs within the police premises, the petitioner shall not be called before 8 AM and shall be let off before 5 PM, and shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

**e)** In addition to standard modes of processing service of summons, the concerned Court may serve or inform the accused about the issuance of summons, bailable and non-bailable warrants the accused through E-Mail (if any), and any instant messaging service such as WhatsApp, etc. (if any). [Hon'ble Supreme Court of India in Re Cognizance for Extension of Limitation, Suo Moto Writ Petition (C) No. 3/2020, I.A. No. 48461/2020- July 10, 2020]:

- i. At the first instance, the Court shall issue the summons.
- ii. In case the petitioner fails to appear before the Court on the specified date, in that eventuality, the concerned Court may issue bailable warrants.
- iii. Finally, if the petitioner still fails to put in an appearance, in that eventuality, the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and may send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

**18.** The petitioner shall surrender all firearms, ammunition, if any, along with the arms license to the concerned authority within 30 days from today. However, subject to the provisions of the Indian Arms Act, 1959, the petitioner shall be entitled to renew and take it back in case of acquittal in this case.

**19.** **The petitioner shall neither stare, stalk, make any gestures, remarks, call, contact, message the victim, either physically, or through phone call or any other social media, nor roam around the victim's home.**

**20.** During the trial's pendency, if the petitioner repeats or commits any offence where the sentence prescribed is more than seven years or violates any condition as stipulated in this order, the State may move an appropriate application before this Court, seeking cancellation of this bail. Otherwise, the bail bonds shall continue to remain in force throughout the trial and after that in terms of Section 437-A of the CrPC.

**21.** Any Advocate for the petitioner and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order, in vernacular and if not feasible, in Hindi.

**22.** In case the petitioner finds the bail condition(s) as violating fundamental, human, or other rights, or causing difficulty due to any situation, then for modification of such term(s), the petitioner may file a reasoned application before this Court, and after taking cognizance, even to the Court taking cognizance or the trial Court, as the case may be, and such Court shall also be competent to modify or delete any condition.

**23.** This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

**24.** Any observation made hereinabove is neither an expression of opinion on the

merits of the case, nor shall the trial Court advert to these comments.

**25.** In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.

**26.** The SHO of the concerned Police Station or the Investigating Officer shall arrange to send a copy of this order, preferably a soft copy, to the victim, at the earliest. In case the victim notices any objectionable behavior or violation of any terms or conditions of this order, the victim may inform the SHO of the concerned Police Station or the Trial Court or even to this Court.

**27.** There would no need for a certified copy of this order for furnishing bonds, and any Advocate for the Petitioner can download this order from the official web page of this Court and attest it to be a true copy. In case the attesting officer or the Court wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

The petition stands allowed in the terms mentioned above.

**Anoop Chitkara,  
Vacation Judge.**

January 20, 2021 (ps).

High