

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MP(M) No. 519 of 2021
Decided on: 01.04.2021**

Inder SinghPetitioner
Versus
State of Himachal PradeshRespondent

Coram

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.
Whether approved for reporting?¹ Yes.***

For the petitioner: Mr. Narender Singh Verma and Mr. Chetan Viraj Sharma, Advocates.
For the respondent/State: Mr. S.C. Sharma and Mr. P.K. Bhatti, Addl. AGs, with ASI Vijay Kumar, I.O. Police station Sadar, Bilaspur, H.P.

Chander Bhusan Barowalia, Judge. *(oral).*

The present bail application has been maintained by the petitioner under Section 439 of the Code of Criminal Procedure seeking his release in case FIR No. 238 of 2020, dated 02.10.2020, under Section 376 IPC, registered in Police Station Sadar Bilaspur, District Bilaspur, H.P.

2. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident of District Solan, H.P. and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by keeping him behind the bars for an unlimited period, so he be released on bail.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

3. Police report stands filed. As per the prosecution story, on 02.10.2020, mother-in-law of the prosecutrix/victim (complainant) got her statement recorded under Section 154 Cr.P.C. with the police, wherein she stated that 3-4 months back her daughter-in-law, prosecutrix/victim (name withheld) divulged that one Inder Singh (petitioner herein) tried to molest her, but the complainant did not believe the prosecutrix. On 02.10.2020, at about 01:30, when the prosecutrix went to bring grass, the complainant heard screams, so she went there and saw both the prosecutrix and the petitioner naked. The petitioner was committing rape on the prosecutrix, so the complainant clamored. The petitioner fled away from the spot. Thereafter, the matter, was reported to the police and ultimately a case was registered. Police carried-out investigation in the matter and relevant recoveries were effected. Initially, the prosecutrix denied for her medical examination. Police recorded the statements of the witnesses under Section 161 Cr.P.C. As per the medical opinion, the prosecutrix has mild mental impairment. The petitioner was arrested and was medically examined. Subsequently, the petitioner agreed for her medical examination, so she was medically examined and as per the medical examination, attempt of sexual assault was not ruled out. On 26.11.2020 statement of the prosecutrix, under Section 164 Cr.P.C. could not be recorded due to her mental illness and as per the medical report her mental age was assessed to be 11 years. After completion of investigation, police presented the *challan*

in the learned Trial Court and now the case is listed on 17.04.2021. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner has committed a serious crime. In case the petitioner is enlarged on bail, at this stage, he may tamper with the prosecution evidence and may also flee from justice, as he is very clever person and one more case under Sections 341, 323 and 506 IPC read with Section 34 IPC is registered against him, so the bail application of the petitioner be dismissed.

4. I have heard the learned Counsel for the petitioner, learned Additional Advocate General for the State and gone through the records, including the police report, carefully.

5. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as he is permanent resident of Himachal Pradesh. He has further argued that no fruitful purpose will be served by keeping the petitioner behind the bars for an unlimited period, especially when investigation is complete, *challan* stands presented in the learned Trial Court, the custody of the petitioner is not at all required by the police and considering the overall facts and circumstances of the case, the petition may be allowed and the petitioner may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner has committed a serious crime. He

has further argued that in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail application of the petitioner be dismissed.

6. In rebuttal the learned Counsel for the petitioner has argued that the petitioner cannot be kept behind the bars for an unlimited period, especially investigation is complete, *challan* stands presented in the learned Trial Court, and the custody of the petitioner is not at all required by the police, so the petition be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the manner in which the offence is alleged to have been committed by the petitioner, the fact that the petitioner is permanent resident of Himachal Pradesh, so neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, the fact that investigation is complete, *challan* stands presented in the learned Trial Court, considering the fact that the petitioner is behind the bars for the last more than six months and cannot be kept behind the bars for an unlimited period, the petitioner is ready and willing to abide by the terms and conditions of bail, in case bail is granted and also considering the overall facts of the case, including the medical examination report of the prosecutrix, and without discussing the same at this stage, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail is required to be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, who has been

arrested by the police in case FIR No. 238 of 2020, dated 02.10.2020, under Section 376 IPC, registered in Police Station Sadar Bilaspur, District Bilaspur, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of ₹25,000/- (rupees twenty five thousand) with one surety in the like amount to the satisfaction of the learned Trial Court. The bail is granted subject to the following conditions:

- (i) That the petitioner will appear before the learned Trial Court/Police/authorities as and when required.
- (ii) That the petitioner will not leave India without prior permission of the Court.
- (iii) That the petitioner will 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 the Investigating Officer or Court.

8. In view of the above, the petition is disposed of.

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(Chander Bhusan Barowalia)
Judge

1st April, 2021
(Virender)