

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

Cr.M.P.(M) No. 337 of 2021

Reserved on: 24.03.2021

Date of Decision: April 7, 2021

Bhupender

..Petitioner.

Versus

State of H.P.

..Respondent.

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹

For the Petitioner: Mr. Anirudh Sharma, Advocate.

For the Respondent: Mr. Raju Ram Rahi, Deputy Advocate General.

Vivek Singh Thakur, J (Oral)

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.11 of 2021, dated 31.01.2021, registered in Police Station Barmana, District Bilaspur, H.P., under Sections 363, 366, 376, 506 and 201 of the Indian Penal Code (hereinafter referred to as 'IPC' in short) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act').

2. Status report stands filed, which reflects that petitioner has been arrested on 03.02.2021 and after remaining

1 Whether reporters of the local papers may be allowed to see the judgment?

in police custody for five days, he has been sent in judicial custody.

3. As per status report, case of the Investigating Agency is that on 31.01.2021, father of victim had approached Police Station Barmana with a written complaint stating therein that his elder daughter, less than 18 years of age, is studying in 10+2 in Panjgain and because of Lockdown she has been studying at home and during night of 30.01.2021 and 31.01.2021, at about 3.00 a.m. stray cattle had started damaging their crop, whereupon he had called his daughter and son to chase away the cattle from the fields as his son and daughter were sleeping in a separate room. It is further stated that son of complainant had responded to the call immediately and had come out of the room with information that his sister was not in her bed whereafter complainant and his wife had also not found their daughter there. Whereupon, they had searched her, on Motorcycle, up till Bairi, but their daughter was not found. Lastly, it was suspected that daughter of the complainant had been kidnapped by some unknown person by alluring her with intention to marry her.

4. After registration of FIR, investigation was started and on 02.02.2021 when police party alongwith complainant and his wife was going towards Solan in search of victim and had reached near Gasaur, the complainant had received a call from his daughter on his Mobile from the mobile of an unknown person wherein victim had disclosed that she was standing at

Bus Stand Piplughat and had asked him to take her home. Upon this information, they rushed to Piplughat, District Solan and victim was found there. Statement of victim was recorded under Section 161 Cr.P.C., wherein it has been recorded that victim had disclosed that she was in contact of petitioner since last two years and during night of 30.01.2021 at about 11.30 p.m. petitioner had informed on her Mobile that he was coming to Panjgain near her house to take her and in case she did not turn up, then he would be finishing her entire family and out of fear she came to Panjgain from her house without informing anybody, where a small car bearing No.HP-01S-0940 was parked and a person was sitting on the driver seat, whereas, accused was standing outside the vehicle and petitioner had forced her to sit on back seat of the car alongwith him. According to her, she had resisted to accompany him, but petitioner had taken her from Panjgain to his home at Bhajolu (Arki) forcibly under threat where they had reached at 4.00 a.m. on next morning i.e. on 31.01.2021 wherefrom driver, with car, was sent back after making payment of fare to him and petitioner had taken her to his room and despite her resistance petitioner had violated her. In the morning, petitioner had taken her to Temple of Naina Mata situated on the hill near his house and kept her sitting there till evening whereas her Mobile was taken and switched off by petitioner at Panjgain itself.

5. It is further stated by victim that in the evening at 4.30/5.00 p.m. petitioner had called some vehicle through a

Mobile call and had brought her on the road where the same vehicle and driver were there in which she had been brought from Panjgain. Petitioner made her to sit in the vehicle and had taken her to Tutikandi, Shimla and had sent the driver, alongwith vehicle, back after making payment of fare and thereafter had taken her to Quarter/rented room of his friend where no one was there and on that night also, despite her resistance, petitioner had violated her twice. They stayed in the same room during night of 01.02.2021.

6. It is further recorded in statement of victim that on 02.02.2021 it came in the knowledge of the petitioner that parents of victim had lodged a complaint in Police Station and police was searching for victim. Whereupon, petitioner pressurized her to go back to home with threat that in case she would disclose the episode to anyone he shall kill her and thereafter, petitioner hired a taxi from Shimla and came alongwith her to Piplughat and left her there. It is further recorded that victim had contacted her father through phone of taxi driver whereafter, police alongwith her parents reached Piplughat and recovered her.

7. It is further reported that challan in present case has been prepared and presented in the Special Court on 03.03.2021. As per complaint Date of Birth of victim is 08.06.2003.

8. Learned counsel for the petitioner has submitted that even if Date of Birth of victim, as claimed by Investigating

Agency, is taken to be correct then also, victim was 17 years 7 months and 22 days of age on the date of alleged incident. Further that it is not a case of kidnapping and violating the victim against her wishes and will, but victim was in contact of the petitioner since last more than two years and she had left her house without informing anybody at home in order to accompany petitioner in a taxi, wherein third person i.e. driver of taxi was also present and according to statement of driver recorded under Section 161 Cr.P.C., victim was not resistant to accompany the petitioner, rather he has stated that both of them kept quiet during the entire travel and it was informed by petitioner that victim was his wife. It is also stated by the victim, in her statement, that she accompanied the petitioner not only from Panjgain to Bhajolu but also from Bhajolu to Tutikandi in broad daylight at 4.30-5.00 p.m. that too after spending one night with him at his home, where allegedly petitioner had violated her and thereafter, she accompanied the petitioner from Shimla to Piplughat again despite having knowledge that her parents have lodged a complaint about her missing and she instead of seeking help of any person in thickly populated and crowded City, like Shimla accompanied the petitioner to Piplughat and from there informed her father about her location. Accordingly all this clearly indicate that victim, who is only 4 months short to attain age of discretion, was roaming with petitioner voluntarily.

9. It is further canvassed that entire episode appears to be consensual and keeping in view age of the victim and her

acquaintance with petitioner since last two years and her active role to accompany petitioner from leaving her house to moving from one place to another and spending nights with him, it is evident that it is not a case of kidnapping and violating the victim against her will, but something else.

10. Lastly, it is submitted that there is no material on record so as to construe that petitioner was having knowledge of minority of victim and further that entire material on record clearly reflect consensual behaviour of victim and, therefore, petitioner deserves to be enlarged on bail.

11. Without commenting on merit regarding statements of complainant, victim and plea taken by learned counsel for the petitioner, however, considering entire facts and circumstances of the case, I am of the opinion that at this stage, it would not be appropriate to continue detention of the petitioner and accordingly he is entitled for bail.

12. Accordingly, petition is allowed and petitioner is ordered to be released on bail in case FIR No.11 of 2021 dated 31.01.2021, registered in Police Station Barmana, District Bilaspur H.P., on his furnishing personal bond in the sum of ₹50,000/- with one surety in the like amount, 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 himself 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 him from disclosing such facts to Court or to any police officer or tamper with the evidence. He 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 his 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, his 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 information.
- (ix) that the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

13. 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.

14. In case the petitioner violates any condition imposed upon him, his 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.

15. 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.

16. 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.

17. Petition is disposed of in aforesaid terms.

18. Copy dasti.

19. 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.

(Vivek Singh Thakur),
Judge.

April 7, 2021
(Purohit)