



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 12th DAY OF SEPTEMBER, 2022
BEFORE
HON'BLE MR. JUSTICE SATYEN VAIDYA
CRIMINAL MISC. PETITION MAIN 2050 OF 2022

Between:-

RAJENDER KUMAR,

....PETITIONER

(SH. INDER SHARMA, ADVOCATE)

AND

STATE OF HIMACHAL PRADESH.

....RESPONDENT

(SH. DESH RAJ THAKUR ADDITIONAL ADVOCATE GENERAL)

This petition coming on for orders this day, the Court
passed the following:

ORDER

By way of instant petition, petitioner has prayed
for grant of pre-arrest bail in case FIR No. 91 of 2022 dated
3.9.2022, registered at Police Station Karsog, District Mandi,
H.P. under Sections 376, 452 and 506 of Indian Penal Code.

2. Notice of the bail petition was issued to the
respondent on 9.9.2022. Today, the status report has been
filed on behalf of the respondent.

3. On 3.9.2022, the prosecutrix reported the matter to the police that on 25.8.2022, she was sexually assaulted by the petitioner in her house during day time, when none else was at home. The reason for delay in lodging the report has been stated to be the absence of the husband of the prosecutrix from home. Statement of prosecutrix under Section 164 Cr.P.C. has also been also recorded. The bail application has been opposed on the ground that the custodial interrogation of the petitioner is required and further that in case of release of petitioner on bail, he may overawe the prosecution witnesses including the prosecutrix.

4. The case of the petitioner is that he is innocent and has not committed any offence. He is permanent resident of Village Bagain, Post Office Karsog, Tehsil Karsog, District Mandi, H.P. and there is no likelihood of his absconding or fleeing from the course of justice.

5. I have heard learned counsel for the parties and have also gone through the case file carefully.

6. The offence allegedly was committed on 25.8.2022, whereas, the report to the police was made on 3.9.2022. There is nothing in the status report to suggest that to whom the petitioner had disclosed the facts between 25.8.2022 to 3.9.2022. The reason for making complaint

after a delay of about eight days is stated to be absence of the husband of the prosecutrix from home. Though, at the stage of deciding the bail application, this Court will not scan the prosecution evidence minutely, yet the facts collected by the prosecution can always be looked into for assessing the gravity and seriousness of offence.

7. The bail application has been opposed on the ground that the petitioner is required for custodial interrogation. However, except for a bald assertion, nothing has been shown as to why his custodial interrogation is required. The allegations against the petitioner are yet to be proved. Pre-trial incarceration cannot be ordered as matter of rule.

8. It has also been apprehended by the respondent that in case of grant of bail to the petitioner, he may overawe the prosecutrix and other prosecution witnesses. Again there is nothing on record to suggest the potential of petitioner to indulge in any such activity. Such apprehension can otherwise be taken care of by imposing appropriate conditions against the petitioner.

9. The preliminary investigation in the case is already complete. No fruitful purpose shall be served by allowing the petitioner to be kept in custody. The

prosecutrix is an adult. The mode and manner in which the offence is alleged to have been committed is subject to proof during the trial.

10. Petitioner is permanent resident of Village Bagain, Post Office Karsog, Tehsil Karsog, District Mandi, H.P. and there is no likelihood of his fleeing from the course of justice.

11. In view of peculiar facts and circumstances of the case, petition is allowed and in the event of arrest of the petitioner in case FIR No. 91 of 2022 dated 3.9.2022, registered at Police Station Karsog, District Mandi, H.P. under Sections 376, 452 and 506 of Indian Penal Code., he shall be released on bail, on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Investigating Officer/Arresting Officer. This order, however, shall be subject to following conditions:-

- i) That the petitioner shall make himself available for investigation 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 the Court or to any police officer;

- iii) That the petitioner shall not leave India without prior permission of the Court.

12. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

12th September, 2022.
(kck)

(Satyen Vaidya)
Judge