IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 2001 of 2020

Date of Decision: Nov

Versus

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

11

, 2020

...Petitioner. ...Respondent.

Rohit Sharma

State of Himachal Pradesh

Coram:

Whether approved for reporting?[1] ***No.***
For the petitioner: Mr. Piyush Verma, Advocate.

For the respondent: Mr. Nand Lal Thakur, Addl. AG, Mr. Ram Lal Thakur, Asstt. AG & Mr. Rajat Chauhan, Law

Officer.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE Anoop Chitkara, Judge. (oral)

A boy aged 20 years, who is incarcerating upon his arrest for alluring and raping a minor girl, has come up before this Court seeking regular bail on the grounds that the family of the girl forced her to lodge a false complaint to break their love affair.

2. Based on a complaint, the police arrested the petitioner on Nov 1, 2020, in FIR No. 195 of 2020, dated 01.11.2020, registered under Sections 363, 366A & 376 of the Indian Penal Code, 1860 (IPC), Section 4 of the Protection of Children from Sexual Offices, Act, 2012 (POCSO Act) and Section 3 of the SC & ST Act, in Police Station Theog, District Shimla, Himachal Pradesh, disclosing cognizable and non- bailable offences.

FACTS:

3. Briefly, the allegations against the petitioner are that the father of the victim

informed the Police Station Theog on Nov 1, 2020, regarding allurement of her daughter by the petitioner vide a written complaint. He informed the police that his

daughter, who is aged 16 years, has been allured by the petitioner Rohit Sharma

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

on 29th October, 2020 at 3.30 p.m. His daughter stayed with him up to 31st October, 2020 and he also committed rape on her. However, in the evening of 31st October, 2020, he dropped her back. Based on such information the police registered the FIR mentioned above.

4. During investigation the victim informed the police that she knew petitioner Rohit for the last three – four months and was in touch with him through Facebook as well as phone. She also informed that two-three weeks ago, petitioner had visited her home and had taken her to Primary School Kandi where in the corridor they had indulged in coitus. She further informed the police that at 9 a.m. on 29th October, 2020, Rohit called her and told her to accompany him for two – three days. Upon this at 3.20 p.m. she left home and informed her cousin that she is going out with Rohit. After walking for four – five kilometers, Rohit met her and then he took her over his bike to the house of his relative. On 30th October, 2020 they participated in a marriage where the victim stayed with him where he indulged in sexual intercourse with her. On 31st October, 2020 when Rohit received phone call from his mother then he dropped her back.

5. The petitioner's criminal history relating to the offences prescribing sentence of greater than seven years of imprisonment or when on conviction, the sentence imposed was more than three years: The contents of the petition and the status report do not reveal any criminal history.

6. The Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and his family.
7. While opposing the bail, the alternative contention on behalf of the State is that if this Court grants bail, such order must be subject to conditions, especially of not repeating the criminal activities.

ANALYSIS AND REASONING:
8. In **Gurbaksh Singh Sibbia and others v. State of Punjab**, 1980 (2) SCC 565,

(Para 30), a Constitutional bench of Supreme Court held that the bail decision must enter the cumulative effect of the variety of circumstances justifying the grant or refusal of bail. In **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**, 2005 (2) SCC 42, (Para 18) a three-member bench of Supreme Court held that the persons

accused of non-bailable offences are entitled to bail, if the Court concerned concludes that the prosecution has failed to establish a prima facie case against him,

or despite the existence of a prima facie case, the Court records reasons for its satisfaction for the need to release such persons on bail, in the given fact situations. The rejection of bail does not preclude filing a subsequent application, and the Courts can release on bail, provided the circumstances then prevailing requires, and a change in the fact situation. In **State of Rajasthan, Jaipur v. Balchand**, AIR 1977 SC 2447, (Para 2 & 3), Supreme Court noticeably illustrated that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also the heinousness of the crime. In **Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh***,* (1978) 1 SCC 240, (Para 16), Supreme Court in Para 16, held that the delicate light of the law favours release unless countered by the negative criteria necessitating that course. In **Dataram Singh v. State of Uttar Pradesh**, (2018) 3 SCC 22, (Para 6), Supreme Court held that the grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. Pre-trial incarceration needs justification depending upon the offense's heinous nature, terms of the sentence prescribed in the statute for such a crime, probability of the accused fleeing from justice, hampering the investigation, criminal history of the accused, and doing away with the victim(s) and witnesses. The Court is under an obligation to maintain a balance between all stakeholders and safeguard the interests of the victim, accused, society, and State.

10. The conduct of the victim clearly points out that she had initially gone with the petitioner up to Primary School and after having coitus with him did not reveal

the fact to anyone and despite that after two – three weeks of her own voluntarily accompanied him. Although, she could not have consented for sexual intercourse as well as leaving custody of her custodian but for deciding the bail, her conduct is sufficient to grant bail to the petitioner.

11. 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.

12. The possibility of the accused influencing the course of the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative conditions and stringent conditions.

13. 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.
14. Following the decision of this Court in **Abhishek Kumar Singh v. State of HP**, Cr.MP(M) No. 1017 of 2020**,** the petitioner shall be released on bail in the FIR mentioned above, subject to his furnishing a personal bond of Rs. Ten thousand only (INR 10,000/-), and shall either furnish two sureties of a similar amount to the satisfaction of the Chief Judicial Magistrate/Ilaqua Magistrate/Duty Magistrate/the Court exercising jurisdiction over the concerned Police Station where FIR is registered, **or** the aforesaid personal bond and fixed deposit(s) for Rs. Ten thousand only (INR 10,000/-), made in favour of Additional Chief Judicial Magistrate/ Judicial Magistrate, Theog, District Shimla, H.P., from any of the banks where the stake of the State is more than 50%, or any of the stable private banks, e.g., 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. Such a fixed deposit need not necessarily be made from the account of the petitioner. If such a fixed deposit is made manually, then the original receipt has to be deposited. If made online, then the copy attested by any Advocate has to be filed, and the depositor shall get the online liquidation disabled. It shall be total discretion of the petitioner to choose between surety bonds and fixed deposits. During the trial's pendency, it shall

be open for the petitioner to apply for substitution of fixed deposit with surety bonds and vice-versa. 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). The Court shall have a lien over the deposits until discharged by substitution, and otherwise up to the expiry of the period mentioned under S. 437-A CrPC, 1973. 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 give security to the concerned Court(s) for attendance. Once the trial begins, the petitioner shall not, in any manner, try to delay the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted, and in case of appeal, also promise to appear before the higher Court, in terms of Section 437-A CrPC.

(b) The attesting officer shall mention on the reverse page of personal bonds, the permanent address of the petitioner along with the phone number(s), WhatsApp number (if any), email (if any), and details of personal bank account(s) (if available).

(c) The petitioner shall join investigation as and when called by the Investigating Officer or any Superior Officer. Whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the petitioner shall not be called before 8 AM and shall be let off before 5 PM. The petitioner shall not be subjected to third-degree methods, indecent language, inhuman treatment, etc.

(d) The petitioner shall cooperate with the investigation at all further stages as may be required, and in the event of failure to do so, it will be open for the prosecution to seek cancellation of the bail granted by the present order.
(e) 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.

(f) Once the trial begins, the petitioner shall not in any manner try to delay

the trial. The petitioner undertakes to appear before the concerned Court, on the issuance of summons/warrants by such Court. The petitioner shall attend the trial on each date, unless exempted.
(g) In addition to standard modes of processing service of summons, the concerned Court may serve 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].

(h) The concerned Court may also inform the accused about the issuance of bailable and non-bailable warrants through the modes mentioned above.
(i) In the first instance, the Court shall issue summons and may send such summons through SMS/ WhatsApp message/ E-Mail.

(j) In case the petitioner fails to appear before the Court on the specified date, then the concerned Court may issue bailable warrants, and to enable the accused to know the date, the Court may, if it so desires, also inform the petitioner about such Bailable Warrants through SMS/ WhatsApp message/ E- Mail.

(k) Finally, if the petitioner still fails to put in an appearance, then the concerned Court may issue Non-Bailable Warrants to procure the petitioner's presence and send the petitioner to the Judicial custody for a period for which the concerned Court may deem fit and proper to achieve the purpose.

(l) In case of non-appearance, then irrespective of the contents of the bail bonds, the petitioner undertakes to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, and also subject to the provisions of Sections 446 & 446-A of CrPC. The petitioner's failure to reimburse the State shall entitle the trial Court to order the transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be spent to trace the petitioner alone and it relates to the exercise undertaken solely to arrest the petitioner in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

(m) The petitioner shall intimate about the change of residential address and

change of phone numbers, WhatsApp number, e-mail accounts, within thirty days from such modification, to the Police Station of this FIR, and also to the concerned Court.
(n) The petitioner shall abstain from all criminal activities. If done, then while considering bail in the fresh FIR, the Court shall take into account that even earlier, the Court had cautioned the accused not to do so.

(o) Considering the apprehension expressed by the learned counsel appearing for the respondent, the petitioner should stay far away from the place of occurrence while on bail - (Vikramsingh v. Central Bureau of Investigation, 2018 All SCR (Crl.) 458).

(p) 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. The petitioner shall not contact the victim.

(q) The petitioner shall surrender all firearms along with ammunitions, 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.

(r) In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may apply for cancellation of bail of the petitioner. Otherwise, the bail bonds shall continue to remain in force throughout the trial and also after that in terms of Section 437-A of the CrPC.

(s) During the trial's pendency, if the petitioner repeats the offence or commits any offence where the sentence prescribed is seven years or more, then the State may move an appropriate application for cancellation of this bail.

15. The learned Counsel representing the accused and the Officer in whose presence the petitioner puts signatures on personal bonds shall explain all conditions of this bail order to the petitioner, in vernacular and if not feasible, in Hindi or English.

16. 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 before 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.

17. Consequently, the petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing bail bonds in the terms described above.
18. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency, from further investigation in accordance with law.

19. 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.
20. 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 complainant and the victim, at the earliest. In case the victim notices stalking or any violation of this order, she may either inform the SHO of the concerned Police Station or write to the Trial Court or even to this Court.

21. In return for the protection from incarceration, the Court believes that the accused shall also reciprocate through desirable behavior.
The petition stands allowed in the terms mentioned above. All pending applications, if any, stand closed.

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Nov 11 , 2020 (PK)

(Anoop Chitkara), Judge.

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