

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

**Cr.MP(M) No. 1513 of 2020**

**Decided on: 07.12.2020**

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Rajesh Kumar .....Petitioner  
Versus  
State of Himachal Pradesh ...Respondent

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*Coram*

***The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.***

***Whether approved for reporting?<sup>1</sup> Yes.***

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**(Through video conference)**

For the petitioner: Mr. Rajesh Kumar Parmar, Advocate.

For the respondent/State: Mr. Gaurav Sharma, Deputy Advocate  
General.  
ASI Vidya Sagar Negi.

For the complainant: Mr. Rahul Singh Verma, Advocate.

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

The matter is taken up through video conference.

2. The instant bail application has been maintained by the petitioner under Section 438 of the Code of Criminal Procedure for grant of bail, in the event of his arrest, in case FIR No. 26 of 2020, dated 29.08.2020, under Sections 452, 376, 354B, 354C, 506, 509 & 323 IPC and Section 72 of IT Act, registered at Women Police Station Nahan, District Sirmour, H.P.

3. As per the petitioner, he is innocent and has been falsely implicated in the present case. He is permanent resident of the place

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

and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, so he may be released on bail.

4. Police report stands filed. As per the prosecution, on 29.08.2020, the prosecutrix (name withheld) got her statement recorded under Section 154 Cr.P.C. before the police, wherein she stated that she was married in the year 2007 and used to reside in a rented accommodation at Paonta Sahib. She has further stated that her husband works in a company at Hyderabad and he used to visit her off and on. They have two children, a girl and a boy. As per the prosecutrix, the petitioner, by pulling the water pipe from the water tank, stopped the water supply to her accommodation. After some days the petitioner had deliberately hidden the inverter and to this effect she made a complaint to the police. On 29.08.2020 in between 09:30 to 10:00 a.m., when she was alone, as her children went to the house of their *naani* (maternal grandmother), the petitioner came inside and forcibly committed rape on her. She has further stated that the petitioner has uploaded some of her photographs on facebook and also shown her nude bathing photographs to one Aamir Khan. She was threatened by the petitioner that in case she divulges the incident to anyone, he will circulate her photographs. Upon the complaint, so made by the complainant, police registered a case and investigation ensued. Police visited the spot of occurrence and made relevant recoveries. Statements of the witnesses were recorded under Section 161 Cr.P.C. It has come in the police investigation that CCTV cameras

installed inside the accommodation of the prosecutrix were switched off on 29.08.2020 at 09:03 a.m., so the incident, as alleged by the prosecutrix, could not be recorded. Police took into possession the mobile phones of the petitioner. Upon checking of one of the phones of the petitioner, police found a screen shot depicting objectionable news about the prosecutrix, Aamir Khan and one Inam Mohammad, so apt Section of IT Act was added. As per the police, the petitioner is joining the investigation and co-operating in it. It has further come in the investigation that on 29.08.2020, in between 09:00 to 10:00 a.m., the mobile location of the petitioner is in his house and he was talking over mobile phone with other persons. The petitioner and Aamir Khan were found to have talked over phone five times and in between 09:00 to 09:13 a.m., on the day of alleged incident, the prosecutrix was busy talking to Aamir Khan over telephone and at that time she was in her accommodation. It has further come in the police investigation that on 29.08.2020 at 09:23 a.m. her mobile location was at Tirupati Medicare, Surajpur, and when the CCTV footage of Tirupati Medicare was checked, she was there at Surajpur, whereas, the prosecutrix herself alleged the time of the incident in between 09:30 to 10:00 a.m. As per the police, investigation in the case is going on and some recoveries are to be effected. Lastly, it is prayed that the application of the petitioner be dismissed, as he was found involved in a serious crime, the petitioner in case at this stage he is enlarged on bail, may tamper with the prosecution evidence and may also flee from justice.

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

6. The learned counsel for the petitioner has argued that the petitioner is innocent and he 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 the place. He has further argued that as the landlord wanted to evict the petitioner, so the complaint was used as a tool against him. He has argued that till now the investigation carried-out by the police clearly shows that the CCTV cameras were deliberately turned off and the mobile location of the petitioner at the time of the alleged incident was in his house. Even the mobile location and CCTV footage obtained from Tripuati Medicare, Surajpur, clearly depict that at 09:23 a.m., on the alleged date of incident, the prosecutrix was not at her accommodation and was in Surajpur. He has prayed that the bail application be allowed in the above backdrop and in the wake of the facts that the petitioner is permanent resident of the place, neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, he is joining the investigation and co-operating in it, thus the custody of the petitioner is not at all required by the police. On the other hand, learned Deputy Advocate General has argued that upon investigation and upon instructions, so received by him from the Investigating Agency, the present case seems

to be false complaint, as the CCTV cameras, installed inside and outside the accommodation of the prosecutrix, were found to be turned off during the alleged occurrence of the incidence. Conversely, the learned counsel for the complainant has argued that considering the seriousness and gravity of the offence, the bail application of the petitioner may be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is local resident of the place and thus is neither in a position to flee from justice nor in a position to tamper with the prosecution evidence and the custodial interrogation of the petitioner is not at all required by the police, as he is joining the investigation and co-operating in it. He has further argued that sending the petitioner behind the bars will not serve any fruitful purpose, so the petition be allowed and the petitioner be enlarged on bail.

8. At this stage, considering the manner in which the incident is alleged to have taken place, the fact that the CCTV cameras were turned off when the incident is alleged to have taken place, the fact that it has come in the investigation that at 09:23 a.m. she prosecutrix was at Surajpur and the incident is alleged to have taken place between 09:30 to 10:00 a.m., considering the fact that during the alleged time of incident the mobile location of the mobile of the petitioner is in his house, the fact that the learned Deputy Advocate General, upon instructions from the Investigating Agency, states that

the present seems to be a false complaint, also considering the facts that the petitioner is resident of the place, thus neither in a position to flee from justice nor in a position to tamper with the prosecution evidence, he is joining the investigation and co-operating in it, custody of the petitioner is not at all required by the police, the fact that sending the petitioner behind the bars will not serve any fruitful purpose and also considering all the facets of the case and without discussing them elaborately, this Court finds that the present is a fit case where the judicial discretion to admit the petitioner on bail, in the event of his arrest, in this case, is required to be exercised in his favour. Accordingly, the petition is allowed and it is ordered that the petitioner, in the event of his arrest, in case FIR No. 26 of 2020, dated 29.08.2020, under Sections 452, 376, 354B, 354C, 506, 509 & 323 IPC and Section 72 of IT Act, registered at Women Police Station Nahan, District Sirmour, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of ₹20,000/- (rupees twenty 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.

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

Copy *dasti*.

**7<sup>th</sup> December, 2020**  
(*virender*)

**(Chander Bhusan Barowalia)**  
**Judge**

High Court of H.P.