

(2022) 01 SHI CK 0054

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 2506, 2507, 2508 Of 2021

Abid Khan And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 19-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438

Indian Penal Code, 1860 — Section 376, 377, 498A

Muslim Women (Protection Of Rights On Marriage) Act, 2019 — Section 4

Citation : (2022) 01 SHI CK 0054

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Deepak Kaushal, Sumesh Raj, Narinder Guleria, Kunal Thakur

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. All these petitions are being decided together as common question of law and facts are involved.

2. By way of instant petitions, petitioners have prayed for pre-arrest bail under Section 438 Cr.P.C. in case registered vide FIR No. 186 of 2021 dated

22.12.2021 in Police Station, Majra, District Sirmaur, H.P. under Sections 498-A, 376, 377, 506 IPC and Section 4 of the Muslim Women (Protection

of rights on marriage) Act, 2019.

3. Petitioner Abid Khan in Cr.M.P.(M) No. 2507 of 2021, petitioner Suleman in Cr.M.P.(M) No. 2506 of 2021 and petitioner Rafian in Cr.M.P.(M)

No. 2508 of 2021 are the husband, father-in-law and mother-in-law, respectively, of the prosecutrix.

4. As per the case of the petitioners there is a matrimonial discord, inter se, the

petitioner Abid Khan and prosecutrix. Petitioners are innocent and have been falsely implicated. The relations between the petitioner Abid Khan and prosecutrix are stated to be strained. The implication of petitioners is alleged to be motivated by ulterior purposes. It is stated on behalf of the petitioners that petitioner Abid Khan has married one Ms. Dilruba on 20.12.2021, whereafter the prosecutrix has concocted a false story to harass the petitioners, whereas she has been residing separately from petitioners since long. The petitioners have undertaken to join the investigation as and when required. As per the petitioners, they have no criminal antecedents.

Petitioners have further undertaken not to tamper with the prosecution evidence.

5. In response, the respondent has filed a common status report, which has been placed in file of Cr.M.P.(M) No.2506 of 2021. In addition, the police file was also produced at the time of hearing of the matter.

6. I have heard learned counsel for the petitioners and learned Additional Advocate General for the State and have gone through the records.

7. The allegations levelled by the prosecutrix against petitioners are though serious in nature, but have not found corroboration during investigation. As

per the version of prosecutrix, she was subjected to unnatural sexual intercourse by petitioners Abid Khan and Suleman on various occasions, but

there is nothing on record to suggest that she had ever complained of such harassments to any person /authority whosoever. It has been alleged by

prosecutrix that she was turned out from the matrimonial house on 20.11.2021 after being subjected to sexual harassments and severe beatings.

Strangely, she did not make any complaint to any person/ authority till the filing of complaint dated 22.12.2021 which culminated in registration of FIR

in question. She was subjected to medical examination and expert opinion was sought to test the veracity of version given by prosecutrix, but nothing

adverse was opined by the medical experts against the petitioners.

8. While deciding the bail application, the Court is to strike a balance between the rights of the victim as well as the accused. Pre-trial incarceration

cannot be ordered as a matter of rule especially when the material on record does not strikingly point a finger of accusation against the accused

persons. The Court is not required to scan the evidence collected during investigation minutely. The material collected during investigation can be

looked into for limited purposes of holding a prima-facie opinion regarding the

accusations levelled against the accused persons.

9. As noticed above, in the instant case, no corroboration has been found to the version of prosecutrix. In addition, there is no explanation for a delay

in lodging the FIR. Even after registration of the case against the petitioners, the prosecutrix has expressed her willingness to the police to keep her

Istridhan/belongings in the house of petitioners.

10. The petitioners are permanent resident of Village and Post Office Miserwala, Tehsil Paonta Sahib, District Sirmaur, H.P. It is not the case of

respondent that petitioners have potential to tamper with the prosecution evidence or to influence its witnesses. It has also not been alleged that the

custody of petitioners is required for custodial interrogation. There is no allegation against the petitioners that in case of their release on bail, the trial, if

any, will be adversely affected.

11. In the peculiar facts and circumstances of the case, all the petitions are allowed and the petitioners are ordered to be released on bail, in case of

their arrest, in case registered vide FIR No.186 of 2021 dated 22.12.2021 in Police Station, Majra, District Sirmaur, H.P. under Sections 498-A, 376,

377, 506 IPC and Section 4 of the Muslim Women (Protection of rights on marriage) Act, 2019, on their furnishing personal bond in the sum of Rs.

25,000/- each with one surety each in the like amount to the satisfaction of Investigation Officer. This order is subject to following conditions: -

(i) They shall make themselves available for the purpose of investigation, and when required;

(ii) They shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(iii) They shall not 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 Court or the Police Officer; and

(iv) They shall not leave India without prior permission of this Court till completion of investigation and thereafter of the trial court, if any.

12. Any observation made hereinabove 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 hereinabove.

Petitions stand disposed of.

A copy of this judgment be placed in each of the connected files.