

**(2020) 08 SHI CK 0306**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition (M) No. 2171 Of 2020

Gaurav Thakur

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

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**Date of Decision :** 25-08-2020

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 164, 438  
Indian Penal Code, 1860 — Section 342, 376, 506

**Citation :** (2020) 08 SHI CK 0306

**Hon'ble Judges :** Chander Bhusan Barowalia, J

**Bench :** Single Bench

**Advocate :** Manoj Pathak, S.C. Sharma, P.K. Bhatti, Kamal Kishore

**Final Decision :** Disposed Of

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## **Judgement**

Chander Bhusan Barowalia, J

1. The matter is taken up through video conference.
2. The present bail application has been maintained by the petitioner under Section 438 of the Code of Criminal Procedure seeking his release, in the event of his arrest, in case FIR No. 54 of 2019, dated 22.11.2019, under Section 376, 342 and 506 IPC, registered in Women Police Station Mandi, District Mandi, H.P.
3. As per the averments made in the petition, the petitioner is innocent and has been falsely implicated in the present case. He is permanent resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. No fruitful purpose will be served by sending him behind the bars, so he be released on bail.
4. Police report stands filed. The prosecution story, as emanates from the

records, is that on 22.11.2019 the prosecutrix (name withheld) made a written complaint to the police alleging therein that in the year 2018 she used to work in the office of Gaurav Thakur (petitioner herein), as Accountant. The prosecutrix further alleged that the petitioner used to sexually molest her on the pretext of marriage. When the prosecutrix asked to marry her, the petitioner flatly refused and threatened her that he has made an obscene/lewd video of the prosecutrix and in case she divulges anything to anyone, he would upload the same on internet. Thereafter, the petitioner started molesting the prosecutrix time and again and also threatened her to upload the explicit video on internet. Upon the complaint, so made by the prosecutrix, police registered a case and the investigation ensued. The prosecutrix was medically examined and her statement under Section 164 Cr.P.C. was recorded. Police visited the spot, prepared the spot map and recorded the statements of the witnesses. The petitioner, seeking his pre arrest bail, approached the Court of lowest rung, which was ultimately dismissed. Thereafter, the petitioner filed the present petition and upon the order of this Court, he joined the investigation on 27.11.2019. During the course of investigation and interrogation, the petitioner disclosed that on 04.08.2019 he had sexual intercourse with the prosecutrix. The petitioner led the police team to the place of occurrence. Police got the spot of occurrence photographed. Police also took into possession the relevant records. During the course of investigation, it was unearthed that the petitioner used to sexually molest the prosecutrix and he prepared an obscene/lewd video and thereafter he started threatening the prosecutrix that he will upload the same on internet. As per the police, mobile phone, through which he filmed the obscene/lewd video, has been taken into possession, but the video was deleted. The mobile phone has been sent for scientific examination and for retrieving the said video and the report is awaited. On 10.02.2020 challan was presented in the learned Trial Court. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner was found involved in a serious crime. There is possibility that in case at this stage, if the petitioner is enlarged on bail, he may flee from justice. The petitioner can also tamper with the prosecution evidence, so his bail application be dismissed.

5. I have heard the learned Counsel for the petitioner, learned Additional

Advocate General for the State and gone through the records, including the police report, carefully.

6. The learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. He has further argued that the petitioner is permanent resident of the place and neither in a position to tamper with the prosecution evidence nor in a position to flee from justice. He

has argued that no fruitful purpose will be served by sending the petitioner behind the bars, as he is joining and co-operating in the investigation, nothing is to be recovered from him. He has argued that the custody of the petitioner is not at all required by the police, so the bail application be allowed.

Conversely, the learned Additional Advocate General has argued that the petitioner was found involved in a serious offence, so at this stage, in case

he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice. He has prayed that the bail application of the petitioner be dismissed.

7. In rebuttal the learned Counsel for the petitioner has argued that the petitioner is neither in a position to flee from justice nor in a position to tamper with the prosecution evidence, as he is permanent resident of the place. His custodial interrogation is not at all required by the police, as he is joining and co-operating in the investigation, nothing remains to be recovered at the instance of the petitioner, so the petition may be allowed and the petitioner may be enlarged on bail.

8. At this stage, after considering the age of the petitioner, who is only 25 years old and that of the prosecutrix, the fact that the prosecutrix and the

petitioner are nearly of same age, considering the fact that the petitioner is permanent resident of the place, so neither in a position to tamper with the

prosecution evidence nor in a position to flee from justice, giving thoughtful and incisive consideration to the facts that the petitioner is joining and co-

operating in the investigation, his custody is not at all required by the police, nothing remains to be recovered at his instance, investigation is complete,

challan stands presented in the learned Trial Court, considering the fact that the petitioner is ready and willing to abide by the terms and conditions of

bail, in case granted, the fact that the custodial interrogation of the petitioner is not at all required by the police, as he is joining and co-operating in the

investigation, considering the manner in which the offence is alleged to have

been committed and also considering the overall facts, which have come on record, and without discussing the same at this stage, 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, 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. 54 of 2019, dated 22.11.2019, under Section 376, 342 and 506 IPC, registered in Women Police Station Mandi, District Mandi, H.P., shall be released on bail forthwith in this case, subject to his furnishing personal bond in the sum of ` 50,000/- (rupees fifty thousand) with one surety in the like amount to the satisfaction of the Investigating Officer. 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.