

(2021) 04 SHI CK 0080

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 608 Of 2021

Lekh Raj

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376

Code Of Criminal Procedure, 1973 — Section 161, 164, 438

Citation : (2021) 04 SHI CK 0080

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : G.R. Palsra, Anil Jaswal, Amit Dhumal, Sukhdev Singh

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. The petitioner is an accused in FIR No.43/2021, registered on 24.03.2021 under Sections 363 and 376 of the Indian Penal Code at Police Station Kihar, District Chamba. Through instant petition preferred under Section 438 of the Code of Criminal Procedure, he seeks his enlargement on anticipatory bail.

2. I have heard learned counsel for the parties and also gone through the status report as well as the record produced today by the respondent-State.

3. The case of the prosecution in nutshell is that:-

3(i). On 24.03.2021, a written complaint was lodged by the victim at Police Station. The victim was stated to have just attained the age of majority. She became acquainted with the bail petitioner for past about four months and became friendlier with him. The petitioner extended a promise to marry her. Under the pretext of this promise, the petitioner took the victim to a Hotel in Chamba on 02.03.2021 and established physical relations with her. The petitioner thereafter also established physical relations with the victim in a

forest. All this time, the victim sincerely believed the promise to marry, extended by the petitioner.

3(ii). Becoming aware of these facts from a friend of the victim, her maternal Uncle inquired about the petitioner. As a result of the inquiry so made, it transpired that the petitioner was already married and had children.

3(iii). The victim was not aware about the previous marriage of the petitioner or the fact that he had children from his marriage. These facts were concealed from her by the petitioner. Victim had believed in petitioner's promise to marry her.

3(iv). The moment the petitioner became aware that his whereabouts had been inquired by the victim's family members, he started threatening the victim and also tried to blackmail her on the basis of audio/video clippings involving the victim with respect to the aforesaid acts.

3(v). On this basis of this complaint, FIR was registered on 24.03.2021. The investigation was carried out. The victim was got medically examined and her MLC was obtained. Her statement under Section 164 Cr.PC was recorded on 25.03.2021. The Investigating Agency also visited the spots where the offending acts were allegedly committed by the petitioner. Statements of witnesses were also recorded under Section 161 Cr.PC. The victim's age was determined as nineteen years on the basis of her date of birth certificate. The investigating agency also obtained the call detail records of the mobile phone numbers belonging to the victim and petitioner.

3(vi). During investigations, it also transpired that the petitioner was already married and had two children. His first wife had died and his two children were being looked after by his In-laws. The petitioner had solemnized second marriage as well. As per the investigations carried out, the petitioner had concealed the factum of his previous two marriages from the victim, extended false promise of marrying the victim and under that pretext, had committed rape upon her.

4. Learned counsel for the petitioner submitted that pursuant to the interim protection granted to the petitioner on 26.03.2021, he has joined the investigations. He further submitted that no recovery is to be effected from the petitioner. He, therefore, submitted that the interim protection granted to the petitioner be made absolute.

Whereas, learned Additional Advocate General has vehemently opposed the confirmation of interim bail granted to the petitioner on the ground that the petitioner with deliberate intention had concealed the fact of his previous two marriages from the victim and had extended a false promise of marrying her. He had committed a serious offence and therefore, does not deserve to be enlarged on bail. Learned Additional Advocate General also submitted that the investigation is still going on. There is serious apprehension that the petitioner will hamper the investigations and will try to tamper the prosecution evidence as well as influence the prosecution witnesses besides intimidating the complainant

and her family members.

5. I have seen the statements of the victim recorded under Sections 161 and 164 Cr.P.C. I have also seen the record produced by the investigating agency. It will not be appropriate to refer to them at this stage, lest it causes prejudice to the case of either party. However, in my considered opinion, present is a case where the custodial interrogation of the petitioner is warranted. The allegations against the petitioner are that he had married twice and had two children from his first marriage, but these facts were concealed by him from the victim. Further allegations are that the petitioner had extended a false promise to marry the victim while being married with another lady (his second wife) . The call detail records as well as audio/video clippings are available in the case file. Investigation is still going on. Considering the totality of the facts and circumstances, nature of allegations levelled against the petitioner, mode and manner of commission of offence, the tender age of the victim as well as the investigations carried out so far by the respondent-State, present bail petition deserves dismissal. The possibility of the petitioner influencing the investigation, the prosecution witnesses, intimidating the complainant and her family members also cannot be ruled out at this stage.

For all the aforesaid reasons, I find no merit in the instant petition and the same is accordingly dismissed alongwith pending miscellaneous application(s), if any. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned Trial Court shall decide the matter without being influenced by any of the observations made hereinabove.