

(2020) 01 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 2201 Of 2019

Parmod Singh Parmar

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 01-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 164, 438
Indian Penal Code, 1860 — Section 120B, 292, 354, 376, 389, 420, 465, 468, 471, 498A, 506
Information Technology Act, 2000 — Section 65, 66A, 66E, 67, 67A

Citation : (2020) 01 SHI CK 0007

Hon'ble Judges : Chander Bhusan Barowalia, J

Bench : Single Bench

Advocate : Ajay Sharma, Rakesh Chaudhary, Shiv Pal Manhans, P.K. Bhatti

Final Decision : Allowed

Judgement

Chander Bhusan Barowalia, J

1. 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. 135 of 2019, dated 16.11.2019, under Sections 376, 354, 292, 420, 389, 506, 498A, 465, 468, 471 IPC read with Section 120B IPC and Sections 65, 66A, 66E, 67 and 67A of Information Technology Act, 2000, registered in Police Station Gagret, District Una, H.P.

2. 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.

3. Police report stands filed. As per the prosecution story, on the prosecutrix (name withheld) moved an application under Section 156(3) Cr.P.C. before the

Court of learned Additional Chief Judicial Magistrate, Amb, wherein she alleged that in the year 2018 she was pursuing B.Tech (Civil) from Hydro Engineering College Nagrota Bagwan and in a trade fair she met Shubham Parmar (co-accused). Subsequently, they fell in love and the co-accused proposed her for marriage, but the prosecutrix refused, as she was only 20 years of age and wanted to marry with the consent of her parents. Despite the suggestion of the prosecutrix that the co-accused should approach her parents, the co-accused enticed her to marry him without the consent of her parents. The prosecutrix on persistent enticing agreed and during the month of February, 2019, the co-accused told her that he has made all the arrangements for solemnizing marriage. On 10.02.2019 the co-accused took the prosecutrix to Naddi, where they stayed in a Hotel, i.e., Naddi Hills and the co-accused told her that they would marry tomorrow. During the night the co-accused started to have sexual intercourse with the prosecutrix, but she refused. The co-accused did not stop and started threatening the prosecutrix that he would kill himself and also took out a knife. Later on, the co-accused forcibly committed sexual intercourse with the prosecutrix and she could not raise hue and cry due to fear. The co-accused occultly, with malafide intentions, prepared a MMS of the forcible sexual intercourse. On the subsequent morning the co-accused turned topsy-turvy and refused for marriage due to some unavoidable circumstances. The co-accused assured the prosecutrix that he will marry her in few days. The prosecutrix being optimistic that the co-accused will marry her, started her routine life despite the stigma suffered by her. Later on, the prosecutrix came to know that the co-accused, through fake account, uploaded some screen shots of the video (MMS), which was prepared by the co-accused. The co-accused also sent the MMS to four students of the college and those students, on being requested by the prosecutrix, deleted the said MMS. The prosecutrix approached the co-accused and asked as to why he is doing all this, on this the co-accused told her that he would defame her. In March, 2019, the co-accused asked the prosecutrix to accompany her to Nagrota City and when she refused, he started threatening her that he would circulate the MMS. The prosecutrix under the fear that the co-accused will make viral the MMS accompanied the petitioner to same hotel at Naddi, where the petitioner threatened her that he will circulate the MMS and committed sexual intercourse with her against her wish. Thereafter, the prosecutrix strictly refused to accompany the co-accused, so the co-accused uploaded the MMS on social media, so as to tarnish the image of the prosecutrix. The prosecutrix disclosed the entire episode to her parents, so the mother of the prosecutrix contacted the co-accused and his father (petitioner herein) and she also met the co-accused in village Deoli. The co-accused, on being coming to know about the entire narrative, instead of reproofing the co-accused, started leveling false allegations against the prosecutrix by using disparaging words and he also threatened to kill her and her mother. Thereafter, the matter was brought to the notice of the police and in presence of the police the co-accused admitted his guilt and the petitioner (father of the co-accused) said that he would solemnize the marriage of the co-accused with the prosecutrix soon. The co-

accused executed a mafinama (written apology) and on 09.05.2019 at Mata Bagula Mukhi Mandir VPO Gagret, Tehsil Ghjanari, Distt. Una, the marriage of the co-accused and the prosecutrix was solemnized and the marriage was duly registered. Thereafter, the co-accused and the prosecutrix started living in their parental house, as the co-accused told the prosecutrix that the petitioner refused to keep them. After a short stint of 2-3 days' cordial relation, the co-accused started maltreating, torturing and beating the prosecutrix and on being asked the co-accused told her that he married her only to escape the clutches of law. On 30.05.2019 the co-accused thrashed the prosecutrix and she came to her parental house and subsequently the matter was reported to the police. Again the co-accused tendered apology before the police. The prosecutrix went to Chandigarh for a training where on 10.07.2019 co-accused came in an inebriated condition and abused the prosecutrix. The petitioner time and again openly said that he married the prosecutrix only to wriggle out from the criminal proceedings. The prosecutrix, after many endeavors of reconciling the matter, was compelled to approach the police, but the police did not register the case, so she made an application under Section 156(3) Cr.P.C. in the Court of learned Additional Chief Judicial Magistrate, Amb, Una. The said application was sent to the police, whereupon a case was registered and the investigation commenced. The prosecutrix was medically examined and scientific samples were preserved for analysis. Statement of the prosecutrix was recorded under Section 164 Cr.P.C. It has come in the police investigation that the co-accused under the pretext of marrying the prosecutrix sexually molested her and also managed to prepare a MMS secretly, which he circulated. Thereafter, the co-accused started blackmailing the prosecutrix and committed sexual intercourse with the prosecutrix. On 09.05.2019 the co-accused solemnized marriage with the prosecutrix, but the petitioner refused to keep them in his house. Police also recorded the statements of the witnesses and procured the relevant records from the concerned hotel. During the course of investigation it was unearthed that the Iphone, through which he made the MMS, was got replaced by him at Chandigarh, and the company had destroyed the same. Scientific samples were sent to RFSL, Chandigarh. The investigation further reveals that the co-accused uploaded the MMS, through fake ID, on facebook, instagram and whatsapp. Lastly, it is prayed that the bail application of the petitioner be dismissed, as the petitioner has committed a serious crime by threatening the prosecutrix with the co-accused. In case the petitioner is enlarged on bail, at this stage, he may tamper with the prosecution evidence and may also flee from justice, so the bail application of the petitioner be dismissed.

4. I have heard the learned Senior Counsel for the petitioner, learned Additional Advocate General for the State and gone through the record, including the police report, carefully.

5. The learned Senior 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 further argued that no fruitful purpose will be served by sending the petitioner behind the bars, so the petition be allowed and the petitioner may be enlarged on bail. Conversely, the learned Additional Advocate General has argued that the petitioner has committed a serious crime and in case he is enlarged on bail, he may tamper with the prosecution evidence and may also flee from justice, so it is prayed that the bail application of the petitioner may be dismissed.

6. In rebuttal the learned Senior Counsel for the petitioner has argued that the custody of the petitioner is not at all required by the police, especially when noting is to be recovered from him and also considering the limited role of the petitioner in the alleged offence, so the application be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the limited role of the petitioner in the alleged offence, being the father of the main accused, the fact that he is not 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, the age of the petitioner, who is 51 years of age, 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 co-accused, being father of the main accused, joining and co-operating in the investigation 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. 135 of 2019, dated 16.11.2019, under Sections 376, 354, 292, 420, 389, 506, 498A, 465, 468, 471 IPC read with Section 120B IPC and Sections 65, 66A, 66E, 67 and 67A of Information Technology Act, 2000, registered in Police Station Gagret, District Una, H.P., shall be released on bail in this case, subject to his furnishing personal bond in the sum of Rs. 25,000/- (rupees twenty five 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.

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