
(2021) 08 SHI CK 0226

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No.754, 755 Of 2021

Pravesh Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 24-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 438, 439
Indian Penal Code, 1860 — Section 34, 376

Citation : (2021) 08 SHI CK 0226

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Tara Singh Chauhan, Anil Jaswal

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioners, who are twins, have approached this Court under Section 438 of Code of Criminal Procedure (in short Cr.PC) seeking bail in case

FIR No. 42 of 2021, dated 20.04.2021, registered under Section 376 read with Section 34 of Indian Penal Code (in short IPC) in Police Station

Puruwala, District Sirmaur, H.P.

2 Status report stands filed and record was also produced. FIR in present case has been registered on the basis of complaint submitted by prosecutrix

on 20.4.2021 in Police Station Puruwala stating therein that she had studied upto MA and was in job at Paonta Sahib but was residing in Rajban

because her family had landed property there. According to complaint, she had met petitioner Parvinder Kumar in 2015 at Kafota for the first time

and since then, she had been in talking terms, and Parvinder, disclosing that he is in Army, had promised her to marry her and during this period,

whenever, he had come home on leave, he had been violating her person forcibly and last violation by him was 1½ years ago and thereafter he was

on Army duty in Sudan wherefrom also, he had been contacting her through Whatsapp call and chat. According to complainant, Parvinder had

disclosed her that they are twins and both are in Army and both will marry with one girl, but, she had refuted the said proposal but by taking advantage

of such custom, petitioner Parvesh Kumar, twin brother of Parvinder, had also pressurized her to have telephonic talks with him and had also forcibly

violated her in forest of Tilorghat. Lastly it was stated in complaint that since 2015 Parvinder Kumar had violated her 5/6 times after making false

promise to marry and his brother Parvesh had also violated her after extending threats to her.

3 On the basis of aforesaid complaint, FIR was registered. Complainant was medically examined and her statement under Section 164 Cr.P.C. was

also recorded before learned Additional Chief Judicial Magistrate, Paonta Sahib on 22.4.2021.

4 As per status report, petitioners had joined the investigation after approaching the High Court by filing present petitions. They were also subjected to

medical examination. As per status report, prosecutrix had produced her mobile phone used for talks, Whatsapp chats and video chats with petitioners

with screen shots taken during those talks saved in mobile phone and also with recording of talks of prosecutrix with petitioner Parvesh Kapoor on

15.01.2021. In the conversation recorded with Parvesh Kapoor, recorded by victim, petitioner Parvesh Kapoor has admitted that his brother Parvinder

had violated prosecutrix for 5/6 times and he (Parvesh Kumar) had violated her once.

5 As per status report, during interrogation, petitioner Parvinder Kapoor had disclosed that he had affairs with prosecutrix for 3-4 years, but, in

February, 2015 he was deputed in Sudan and there was break up in relations and for consoling the victim, he had conversation with prosecutrix

through Whatsapp and video chats, but, he had refused the violation of person of prosecutrix. It is stated in status report that both petitioners had been

married on 19.4.2021 with two different girls by solemnizing the marriage firstly in temple and thereafter in the Court at Paonta Sahib. It is stated in

status report that claim of victim is substantiated from recording of conversation and that petitioners are influential persons and they can threat or

allure the prosecution witnesses and both are serving in Indian Army and in case, they are enlarged on bail, then, they can avoid joining the police

investigation and interrogation as in Army Protocol, to associate Army personnel for interrogation, a long cumbersome process is required to be

followed.

6 Script of conversation recorded by victim, reduced into writing, and screen shots of conversation between victim and petitioners and screenshots of

video chatting/calls have also been made part of record.

7 It is submitted on behalf of petitioners that prosecutrix being well educated grownup girl, who had been in job in Paonta Sahib and residing

independently in Rajban, was competent enough to know and understand consequences of her deeds and petitioners had never agreed or consented or

promised to marry her, but, petitioner Parvinder Kapoor and prosecutrix were in relationship, but the said relationship had ended in February, 2015 and

thereafter, prosecutrix had tried to develop relations with Parvesh Kumar and she had been pressurizing him to marry her for which petitioners had

never promised and when marriage of petitioners was solemnized on 19th April, 2021, prosecutrix had lodged FIR on 20th April, 2021 purporting that

petitioners had been violating her person after giving false promise of marriage, which is not true.

8 Learned Additional Advocate General has referred the conversation, chatting and screen shots to substantiate the plea of prosecutrix, whereas,

learned counsel for petitioners has referred the same conversation and chatting to point out that at no point of time either Parvinder or Parvesh had

agreed to marry the prosecutrix and in the entire conversation, prosecutrix was pressing petitioners to promise to marry, but, in entire conversation,

petitioner Parvesh had been suggesting to have more intimacy before deciding to marry. He has submitted that though in conversation, Parvesh

Kumar has been alleged to have been admitted that he had violated prosecutrix once and his brother had violated her 5/6 times, but, in this

conversation also, he has not admitted that said physical relations were developed for promise to marry. It is submitted by learned counsel for

petitioners that from conversation it appears that earlier, she was asking Parvinder to marry her, but, in conversation, she had been asking Parvesh to

promise to marry her. Lastly, it is submitted by learned counsel for petitioners

that in any case, impact of conversation and chats on merits and de-merits of case is to be assessed by trial Court as in these conversations and at this stage, there is no material on record to conclude either way that as to whether allegations of prosecutrix are true or not and therefore, in the light of evidence available on record, there may only be suspicion and for suspicion only, petitioners, who are serving in Army and law abiding citizens and ready to furnish bail bonds, should not be sent behind the bars particularly when they have joined the investigation and investigation is complete and challan has been presented in Court. Petitioners have also appeared before Court on 21st August, 2021, the date fixed for their presence after presentation of challan before the Magistrate. According to him, after presentation of challan possibility of tampering with evidence also does not survive.

9 Without commenting upon the rival contentions of parties and applying principles, factors and parameters as propounded by the Supreme Court and this Court, required to be considered at the time of adjudication of bail application, I am of the considered view that in the facts and circumstances, detailed supra, petitioners are entitled to be enlarged on bail. Accordingly, petitioners are ordered to be released on bail subject to their furnishing personal bonds each in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of concerned trial Court within two weeks from today and subject to further conditions which may be imposed for ensuring their presence during trial and also subject to the following conditions:-

- (i) That the petitioners shall make themselves available during the investigation as well as trial on each and every date as and when required;
- (ii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- (iii) That the petitioners shall not obstruct the smooth progress of the investigation as well as trial;
- (iv) That the petitioners shall not jump over the bail and shall inform, in writing, regarding change of address, land line number and/or mobile number, if

any, in advance, to concerned Police Station;

(v) That the petitioners shall not commit the offence similar to the offence to which they are accused or suspected or the commission of which they

are suspected;

(vi) In the event of repetition of commission of offence, bail granted in present case shall be liable to be cancelled on taking appropriate steps by

prosecution/police;

(vii) That the petitioners shall not leave India without prior permission of Court;

(viii) That petitioners shall not misuse their liberty in any manner.

10. It will be open to the prosecution to apply for imposing any such other or further condition on the petitioner as deemed necessary in the facts and

circumstances of the case and in the interest of justice. It will also be open to the trial Court/Magistrate to impose any other or further condition on the

petitioner as it may deem necessary in the interest of justice.

11. In case the petitioner violates any condition imposed upon them, their bail shall be liable to be cancelled. In such eventuality, prosecution may

approach the competent Court of law for cancellation of bail in accordance with law.

12. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No. HHC/VIG/Misc.Instructions/93-

IV.7139 dated 18.3.2013.

13 Any observation made in this order shall not affect the merits of case in any manner and will strictly confine for the disposal of this bail application

filed under Section 439 of Code of Criminal Procedure 1973.

14. The petitioners are permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified

copy of the order, however, they may verify the order from the High Court website or otherwise.

Petitions stand disposed of.

Dasti copy on usual terms.