
(2012) 03 SHI CK 0342
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. (M) No. 126 of 2012

Sh. Duni Chand

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2012) 03 SHI CK 0342

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—This is an application u/s 439 Cr.P.C. for releasing the petitioner on bail in FIR No. 148/11 dated 16.7.2011, registered at Police Station, West Shimla under Sections 363, 366, 376 IPC. It has been stated that petitioner has been arrested on 18.7.2011 and since then he is in custody. The allegations against the petitioner are that on 15.7.2011 he kidnapped the prosecutrix in order to commit sexual intercourse with her. She was taken away to get marry with her. It has been alleged that petitioner had committed sexual intercourse with the prosecutrix.

2. The petitioner is innocent, he has been falsely implicated in the case at the instance of the parents of prosecutrix. The petitioner and prosecutrix were having love affair with each other and when parents of the prosecutrix came to know about the said love affair then they have falsely implicated the petitioner in the case. He has committed no offence. The petitioner filed bail application which has been dismissed by learned Addl. Sessions Judge, Shimla on 6.1.2012. The petitioner is ready to furnish bail bonds in accordance with the directions of this Court. The prayer has been made for releasing the petitioner on bail.

3. The status report has been filed. It has been stated that the case has been registered on the complaint of Dila Ram alleging that his daughter studying in

school at Shogi had not returned in the evening on 15.7.2011. She was searched but could not be traced. Duni Chand about two months ago had visited his house and disclosed his intention to marry with prosecutrix. He told him that prosecutrix could not be married for two years on account of her age. The complainant suspected the involvement of Duni Chand for the commission of offence. On this, the case was registered.

4. It has been found in the investigation that date of birth of the prosecutrix is 9.12.1994. The prosecutrix disclosed that petitioner had committed forcible sexual intercourse with her on 17.7.2011. The petitioner was arrested and he is in custody. The prayer has been made for rejection of the bail application.

5. Heard and perused the record. It has been submitted by Learned Counsel for the petitioner that till now prosecution has examined seven witnesses including complainant and prosecutrix. It has been stated that complainant and prosecutrix have been declared hostile and they have not supported the prosecution case. In all, there are twenty six witnesses and next date of hearing in the case in the Court of learned Addl. Sessions Judge, Shimla is fixed on 29th/30th May, 2012. The copies of statements of witnesses" recorded in the trial Court have not been placed on record. In these circumstances, it is not possible to observe anything regarding the evidence which has come on record till now.

6. In the status report, it has been stated that prosecutrix has stated that petitioner had committed forcible sexual intercourse with her; therefore, age of the prosecutrix for purposes of bail is not material. In these circumstances, the petitioner has failed to make out a case for grant of bail. Resultantly, petition fails and is accordingly dismissed. The observations made in the judgment are for disposal of the bail application and it shall not be construed as expression of opinion on the merits of the case.