
(2012) 02 SHI CK 0071
In the High Court Of Himachal Pradesh
Case No : Cr.M.P. (M) No. 153 of 2012

Shri Khem Raj

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 34, 376, 379, 511

Citation : (2012) 02 SHI CK 0071

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Judgement

Kuldip Singh, Judge

1. This is an application u/s 438 Cr.P.C. for releasing the petitioner on bail in FIR No. 30/2012 dated 07.02.2012, registered at Police Station, Dhalli, under Sections 376, 511 IPC. It has been stated that the above case has been registered at the instance of one Tara Chand and on account of registration of the case, the petitioner is apprehending his arrest in the above case. The petitioner is innocent, he has committed no offence. The petitioner has been falsely implicated by the complainant due to enmity. There is no legal evidence for connecting the petitioner with the commission of alleged offence. The petitioner is ready to join the investigation and furnish bail bonds in accordance with the directions of this Court. It has been stated that petitioner had earlier filed bail application which has been dismissed by learned Sessions Judge, Shimla, on 16.02.2012. The submission has been made for releasing the petitioner on bail u/s 438 Cr.P.C.

2. The status report has been filed. It has been stated that case has been registered on the basis of rapat No. 22 dated 06.02.2012, Police Post, Sunni, recorded at the instance of the prosecutrix aged about 12 years. She has stated that on 06.02.2012 she had gone to the school, after the school she had gone to her grandmother's house at Mandoghat. On her return, petitioner met her. He

offered to give Rs. 100/- to her and asked her to accompany him in bushes, she refused and started weeping. There was nobody nearby and it was about 5.00 P.M. The petitioner pulled her in the bushes and committed forcible sexual intercourse with her. She felt pain during the sexual intercourse. On hearing the calls of her sister Sheela Devi, the petitioner left her and ran away from the place. She narrated the incident to her sisters, the sisters and the prosecutrix narrated the incident to their mother also. The mother informed the father of the prosecutrix who was not in the house. On this the case was registered. The prosecutrix was got medically examined. The Medical Officer ruled out forcible sexual intercourse and thereafter Section 511 IPC was added. After the incident, the petitioner absconded and could not be traced.

3. The anticipatory bail application of the petitioner was rejected by learned Sessions Judge. After obtaining interim bail from the High Court, the petitioner joined the investigation. He was got medically examined. The petitioner has denied his involvement in the commission of the offence. He has stated that due to enmity the case has been registered. It has been stated that no recovery is to be made from the petitioner. However, keeping in view the seriousness of the case, the prayer has been made for rejection of the bail application. It has also been stated that petitioner is also an accused in FIR No. 185 dated 16.08.2008, registered at Police Station, Dhalli, under Sections 379, 34 IPC.

4. Heard and perused the record. As per date of birth certificate of the prosecutrix, her date of birth is 15.04.1999. The alleged occurrence took place on 06.02.2012. On the date of alleged occurrence the prosecutrix was thus about 12 years and 10 months. The Learned Counsel for the petitioner has stated that prosecution case is false inasmuch as prosecutrix has stated that she felt pain during sexual intercourse, but doctor has ruled out any sexual intercourse. He has also submitted that no injury was found on the person of the prosecutrix even though the allegation is that petitioner pulled her in the bushes and committed forcible sexual intercourse with her.

5. The M.L.C. of the prosecutrix is on record. In the status report, it has been stated that Medical Officer in the M.L.C. has not affirmed sexual intercourse with the prosecutrix. In the M.L.C., it has been stated that hymen was intact, vagina admitting a little tip of finger. In the M.L.C., the doctor has nowhere stated that no sexual intercourse at all has taken place with the prosecutrix. In the M.L.C., no doubt, no injury has been found on the thighs, external genital areas, breasts, but in the M.L.C., it has not been stated whether there were injuries or scratch marks on any other part of the body of the prosecutrix. Simply because hymen was intact that does not mean no sexual intercourse took place with the prosecutrix, for constituting offence u/s 376 IPC, penetration is essential, but it is not necessary that it should be complete. The prosecutrix has stated that she felt pain during sexual intercourse. The case is at initial stage and, therefore, keeping in view the seriousness of the offence and the age of the prosecutrix, the petitioner is not entitled to indulgence of bail u/s 438 Cr.P.C. The application

is dismissed. The observations made in the judgment are for the disposal of the bail application and shall not be construed as an expression of opinion on the merits of the case.