

**(2020) 01 SHI CK 0008**

**In the High Court Of Himachal Pradesh**

**Case No :** Criminal Miscellaneous Petition (M) No. 2200 Of 2019

Shubham 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, 439  
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 0008

**Hon'ble Judges :** Chander Bhusan Barowalia, J

**Bench :** Single Bench

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

**Final Decision :** Dismissed

## 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 (petitioner herein). Subsequently, they fell in love and the petitioner 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 petitioner should approach her parents, the petitioner 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 petitioner told her that he has made all the arrangements for solemnizing marriage. On 10.02.2019 the petitioner took the prosecutrix to Naddi, where they stayed in a Hotel, i.e., Naddi Hills and the petitioner told her that they would marry tomorrow. During the night the petitioner started to have sexual intercourse with the prosecutrix, but she refused. The petitioner did not stop and started threatening the prosecutrix that he would kill himself and also took out a knife. Later on, the petitioner forcibly committed sexual intercourse with the prosecutrix and she could not raise hue and cry due to fear. The petitioner occutly, with malafide intentions, prepared a MMS of the forcible sexual intercourse. On the subsequent morning the petitioner turned topsy-turvy and refused for marriage due to some unavoidable circumstances. The petitioner assured the prosecutrix that he will marry her in few days. The prosecutrix being optimistic that the petitioner will marry her, started her routine life despite the stigma suffered by her. Later on, the prosecutrix came to know that the petitioner, through fake account, uploaded some screen shots of the video (MMS), which was prepared by the petitioner. The petitioner 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 petitioner and asked as to why he is doing all this, on this the petitioner told her that he would defame her. In March, 2019, the petitioner 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 petitioner 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 petitioner, so the petitioner 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 petitioner and his father (co-accused) and she also met the co-accused in village Deoli. The co-accused, on being coming to know about the entire narrative, instead of reprooing the petitioner, 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 petitioner admitted his guilt and co-accused (father of the petitioner) said that he would solemnize the marriage of the petitioner with the prosecutrix soon. The petitioner 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 petitioner and the prosecutrix was solemnized and the marriage was duly registered. Thereafter, the petitioner and the prosecutrix started living in their parental house, as the petitioner told the prosecutrix that his father (co-accused) refused to keep them. After a short stint of 2-3 days' cordial relation, the petitioner started maltreating, torturing and beating the prosecutrix and on being asked the petitioner told her that he married her only to escape the clutches of law. On 30.05.2019 the petitioner thrashed the prosecutrix and she came to her parental house and subsequently the matter was reported to the police. Again the petitioner tendered apology before the police. The prosecutrix went to Chandigarh for a training where on 10.07.2019 petitioner 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 petitioner under the pretext of marrying the prosecutrix sexually molested her and also managed to prepare a MMS secretly, which he circulated. Thereafter, the petitioner started blackmailing the prosecutrix and committed sexual intercourse with the prosecutrix. On 09.05.2019 the petitioner solemnized marriage with the prosecutrix, but co-accused (father of 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 petitioner 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. There is threat to the life of the prosecutrix from the petitioner. 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. He has further argued that there threat to the life and liberty of the prosecutrix from the petitioner. In order to support his arguments the learned Additional Advocate General has placed reliance on the following judicial pronouncements:

1. Adri Dharan Das vs. State of W.B., (2005) 4 SCC 303; &

2. Jai Prakash Singh vs. State of Bihar & another, (2012) 4 SCC 379.

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, as nothing is to be recovered from him and he is neither in a position to tamper with the prosecution evidence nor in a position to flee from justice, as he is resident of the place. He has further argued that the petitioner is only 24 years of age, so the application be allowed and the petitioner be enlarged on bail.

7. At this stage, considering the material, which has come on record, which clearly reveal that the petitioner uploaded the MMS on facebook, instagram and whatsapp, he time and again threatened the prosecutrix, the material, which has come on record, also clearly show that in case the petitioner is enlarged on bail, he may again repeat such acts, may tamper with the prosecution evidence and the case is at initial stages and recoveries are yet to be effected from the petitioner. Thus, at this stage, this Court, considering the overall material, which has come on record, and without discussing the same at length, deems it apt not to extend and grant anticipatory bail to the petitioner, as there are chances that he could jump over the bail and may tamper with the prosecution evidence, may flee from justice and investigation will hamper and there is also threat to the life and liberty of the prosecutrix from the petitioner.

8. This Court has gone through the judicial pronouncements relied upon by the learned Additional Advocate General. The ratio laid down in Adri Dharan Das vs. State of W.B., (2005) 4 SCC 303, is fully applicable to the facts of the present case, as anticipatory bail is granted for a limited duration, so as to enable the accused to move the regular Court for bail under Section 439 Cr.P.C. and such duration may be extended to a date on which the bail application is disposed of or even few days thereafter to enable the accused to move the higher Court. True it is that till the applicant avails remedies up to higher courts, the requirements of Section 439 become dead letter. In another judicial pronouncement, i.e., Jai Prakash Singh vs. State of Bihar & another, (2012) 4 SCC 379, it is held that anticipatory bail, being extraordinary privilege should be granted only in exceptional cases and the Courts conferred with the discretion

should exercise this discretion after application of mind whether it is a fit case of grant of anticipatory bail or not. The above judgment is also fully applicable to the facts of the present case. Admittedly, the Courts should not exercise discretionary powers conferred under Section 438 Cr.P.C. where the intensity of the available material is such that it clearly show the involvement of the accused and the Court must not yield to spasmodic sentiment to unregulated benevolence.

9. In view of the above, the present petition, being devoid of merits, deserves dismissal and is accordingly dismissed. Interim bail granted to the petitioner by this Court, vide order dated 29.11.2019, is cancelled and the personal and surety bonds, which were executed by the petitioner, shall stand forfeited.