
(2020) 10 SHI CK 0458

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 1746, 1782 Of 2020

Virender Kumar And Others

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 201, 363, 366A, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 4, 17
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2020) 10 SHI CK 0458

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Kush Sharma, Raju Ram Rahi

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. These petitions, preferred to enlarge the petitioners on bail in case FIR No.90 of 2020 dated 12.09.2020, registered in Police Station Khundian

District Kangra, H.P. under Sections 363, 366A and 201 of the Indian Penal Code (hereinafter referred to as "IPC" in short) and Sections 4 and

17 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act" in short).

2. Status reports stand filed, wherein it is stated that on 12. 09.2020 complainant Surjeet Singh had submitted a written application in Police Station

Khundian, stating therein that his 17 years old daughter after leaving home on 11.09.2020 at 10.00 a.m. did not return till date and despite searching

her at his own level everywhere in relations, she was not found anywhere and he had suspected that some unknown person had kidnapped his minor

daughter. On the basis of this application, FIR in question, was registered.

3. It is stated in the status reports that during investigation it was found that victim had gone to her cousin's (daughter of Bua) matrimonial home in

Village Bhadolikalan, Tehsil Jhanduta District Bilaspur on 11.09.2020 and during night intervening of 12.09.2020 and 13.09.2020 she was brought back

by her sister and her statement was recorded in presence of her mother and at that time, victim, in writing, had refused to undergo medical

examination and thereafter, she was handed over through a memo to her parents. Her statements under Sections 161 and 164 of Cr.P.C. were also

recorded on 12.09.2020 and 13.09.2020 respectively, wherein she had disclosed that she had gone to the matrimonial house of her cousin without

telling anybody. In these statements she had not disclosed any kind of offence committed against her.

4. It is further stated in the status reports that on 28. 09.2020 father of victim Surjeet Singh had submitted a written application in the office of Sub-

Divisional Police Officer (SDPO) Jwalamukhi, stating therein that on 11.09.2020 petitioner-Virender Kumar had kidnapped his daughter and earlier he

was not knowing about this and, therefore, he had lodged a missing report of his daughter in Police Station Khundian and thereafter, his daughter was

recovered on 12.09.2020 and was handed over to them in Jwalamukhi Rest House and on 13.09.2020 they were called to the Court and without

asking them (parents) statement of victim was recorded before the Magistrate. At that time, they were not knowing about the incident of rape

happened with the girl and this came in their knowledge later on. After receiving this application, matter was referred to Police Station Khundian and

Sections 366A and 376 of IPC and Section 4 of POCSO Act were inserted in report/FIR and medical examination of the victim was got conducted

through lady Doctor in Civil Hospital Jwalamukhi in presence of her mother and Lady Constable Anuradha and samples were taken, preserved and

sent for chemical analysis to RFSL. On 29.09.2020 statement of victim under Section 164 Cr.P.C. was again recorded before learned Judicial

Magistrate 1st Class (2) Dehra. It is also stated in status report that thereafter petitioner-Virender Kumar had visited the Police Station on 30.09.2020

with the order of High Court, granting him anticipatory bail. It is also mentioned that at the time of commission of offence, age of the victim was 17

years 3 months and 4 days.

5. Record has also been produced. On perusal of record, it has been found that during investigation Call Detail Report (CDR) of the victim has also

been taken, wherein it has been found that victim was in regular contact with petitioner-Virender Kumar since last five-six months and maximum calls

have been made by the victim herself.

6. Firstly, in the statement recorded on 12.09.2020 under Section 161 Cr.P.C., victim had stated that she had gone to the house of her cousin on her

own volition and she was not kidnapped by anybody and she had come back herself at her own will and she had not been violated or subjected to any

sexual assault, and lastly she has stated that there was no role of anybody, in any manner, in leaving home by her.

7. In statement recorded on 14.09.2020 under Section 164 Cr.P.C. victim had stated that on 11.09.2020 at about 10.00 a.m. she had gone to the house

of her cousin without telling anybody and next day i.e. on 12.09.2020 her sister Anuradha had brought her back.

8. After recovery victim was taken to the Hospital where she had stated that she was not interested to undergo medical examination and further that

she was making such statement without any pressure from any side and her mother had also made statement that she was in agreement with her

daughter and these statements were reduced into writing on MLC and victim and her mother had appended their signatures on it.

9. After receiving second written complaint from the father of victim, statement of victim was again recorded under Section 161 Cr.P.C., wherein she

had stated that on 11.09.2020 petitioner-Virender Kumar had kidnapped after alluring her for marriage with her and that he is brother-in-law (Devar)

of her cousin and for the last six months she had been talking with him on Mobile and he had taken her towards the house of his younger sister, where

she was kept for one night and was violated by petitioner and on 12.09.2020 her sister had called petitioner-Virender Kumar and had asked about

kidnapping of victim by petitioner-Virender which was replied by petitioner in affirmative and thereupon her cousin Anuradha and brother-in-law

Pawan (husband of Anuradha) had taken her to Jwalamukhi to her parents and therefrom she had gone home.

10. In her second statement recorded under Section 164 Cr.P.C. on 29.09.2020,

victim had stated that on 11.09.2020 petitioner resident of Village Bhadolikalan, Bilaspur had kidnapped her and taken her at about 10.00 a.m. towards Una, where his younger sister was residing and at that place accused had violated her and when he came to know about her Caste he had refused to marry her and thereafter his sister-in-law and his brother had dropped her at Jwalamukhi.

11. After receiving second complaint, victim was again subjected to medical examination and during examination Medical Officer has not found any physical external or internal injuries on the person of victim. Doctor has not given any final opinion with respect to sexual assault upon the victim.

Though swab and samples of victim have been also sent to RFSL, but those samples and swabs have been taken after more than 15 days of the alleged happening and I do not think that report of such samples would be of any help to any side.

12. As is evident from the record and also endorsed by the Officer present in Court that cousin (daughter of Bua) of victim is already married to brother of the petitioner and both sides belong to Scheduled Caste category but different sub-category and families of the accused and Aunt (Bua) of victim are in relation.

13. From the CDR, it is evident that victim had been calling petitioner-Virender Kumar for number of times everyday and in the month of September 2020 itself she was in constant touch of the petitioner and had been calling about and even more than 10 times each day.

14. Allegation against co- accused Parmila Devi (petitioner in Cr.M.P.(M) No.1782 of 2020) is that she had destroyed the evidence by washing clothes and helping the petitioner in commission of crime and thus, she has been added as an accused under Section 201 IPC.

15. Considering entire given facts and circumstances, without commenting upon evidence on record, which is to be appreciated by the trial Court at the time of conclusion of trial, I find that it is a fit case for enlarging the petitioners on bail.

16. Accordingly, petition(s) are allowed and petitioners are ordered to be released on bail in case FIR No.90 of 2020 dated 12. 09.2020, under Sections 363, 366A and 201 IPC and Sections 4 and 17 of POCSO Act, registered in Police Station Khundian District Kangra, H.P., on their furnishing

personal bond in the sum of ` 50,000/- each with one surety each in the like amount, within three weeks from today to the satisfaction of JMIC (2),

Dehra, subject to following conditions:-

Â (i) That the petitioners shall make themselves available to the police or any other Investigating Agency or Court in the present case 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 him 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/trial;

(iv) that the petitioners shall not commit the offence similar to the offence to which they are accused or suspected;

(v) that the petitioners shall not misuse their liberty in any manner;

(vi) that the petitioners shall not jump over the bail; and

(vii) that they shall not leave the territory of India without prior information. They shall inform the Police/Court their contact numbers and shall keep on

informing about change in addresses and contact numbers, if any, in future.

17. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioners as deemed

necessary in the facts and circumstances of the case and in the interest of justice.

18. In case the petitioners violate 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.

19. JMIC (2), Dehra is directed to comply with the directions issued by the High Court, vide communication No.HHC.VIG./Misc. Instructions/93-

IV.7139 dated 18.03.2013.

20. Observations made in these petition(s) hereinbefore, shall not affect the merits of the case in any manner and are strictly confined for the disposal

of the bail application.

21. Registry to transmit a copy of this order to the trial Court through E-mail.

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