



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.319 of 2023

Date of Decision : 20th February, 2023

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|---------------------------|--------|------------------|
| Rohit | Versus | Petitioner |
| State of Himachal Pradesh | |Respondent |

Coram:

The Hon’ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the Petitioner : Mr. Ajay Kumar, Advocate.
For the Respondent : Mr. Rakesh Dhaulta and Mr. Rajan Kahol,
Additional Advocates General, for the State.

Sub Inspector Bhagat Ram, I/O, Police Post, Jutogh, Police Station, West Shimla, District Shimla, Himachal Pradesh, is present alongwith record.

Satyen Vaidya, Vacation Judge (oral)

By way of instant petition, petitioner has prayed for grant of bail under Section 439 of the Code of Criminal Procedure, in case FIR No.33/23 dated 6.2.2023, registered at Police Station, West Shimla, District Shimla, Himachal Pradesh, under Section 376 of the Indian Penal Code.

- 2. Petitioner is in custody since 6.2.2023.
- 3. It is submitted on behalf of the petitioner that he is innocent. The prosecutrix was maintaining relationship with him consensually since long. The parents of the petitioner were not agreeable for the marriage on account of disparity in caste. As per petitioner, he had never forced

1 Whether reporters of Local Papers may be allowed to see the judgment?

the prosecutrix to maintain physical relations with him nor had he extended any false promise to marry. Petitioner is stated to be permanent resident of Village Palsawan, Post Office, Chanog, Tehsil and District Shimla, Himachal Pradesh. He has undertaken to abide by all the terms and conditions as may be imposed.

4. Learned Additional Advocate General has opposed the bail application on the ground that petitioner is accused of serious offence. The investigation is still going on. In case of release of petitioner on bail, he may try to tamper with prosecution evidence.

5. I have heard Mr. Ajay Kumar, learned counsel for the petitioner and Mr. Rajan Kahol, learned Additional Advocate General for the State.

6. The status report filed on behalf of the respondent/State reveals that the prosecutrix is presently about 22 years old and petitioner is about 28 years old. As per allegations in the complaint submitted by prosecutrix with the Police, she and petitioner were in relationship since 2020. They had maintained sexual relations repeatedly. It is alleged against the petitioner that he had committed sexual intercourse with the prosecutrix under false promise to marry. The prosecutrix had also submitted in the complaint that she had contacted the parents and sister of petitioner who had refused to marry petitioner with her on the grounds of difference in caste.

7. Allegations against petitioner are yet to be proved. Petitioner is already in judicial custody, which *prima facie*, shows that his personal requirement in completion of investigation was not required. The prosecutrix had age of sufficient maturity when she allegedly indulged in unwanted activities with the petitioner. Her relationship with petitioner continued for about three years. Under the given facts of the case, no fruitful purpose would be served by detaining the petitioner in custody for indeterminate period. The prosecution, if any, against petitioner is going to take considerable time before conclusion. Pre-trial incarceration cannot be ordered as a matter of rule.

8. The apprehension of respondent-State that petitioner may tamper with prosecution evidence, if released on bail, can be taken care of, by putting petitioner to appropriate terms. There is no likelihood of petitioner absconding or fleeing from the course of justice as he is permanent resident of Village Palsawan, Post Office, Chanog, Tehsil and District Shimla, Himachal Pradesh and has roots in the society.

9. Keeping in view the facts and circumstances of the case, petition is allowed. Petitioner is ordered to be released on bail in case FIR No. No.33/23 dated 6.2.2023, registered at Police Station, West Shimla, District Shimla, Himachal Pradesh, under Section 376 of the Indian Penal Code, on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of any Judicial

Magistrate First Class at Shimla. This bail order is, however, subject to the following conditions:-

- (i) ***That the petitioner will appear before the Court and the Investigating Officer whenever required;***
- (ii) ***That he will 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/her from disclosing any facts to the Court or the police;***
- (iii) ***That he will not tamper with the prosecution evidence nor he will try to win over the prosecution witnesses or terrorize them in any manner;***
- (iv) ***That he will not repeat the offence, as is alleged to have been committed by him;***
- (v) ***That he will not deliberately and intentionally act in a manner which may tend to delay the investigation or the trial of the case.***
- (vi) ***That he will not leave India without prior permission of the Court.***

10. Needless to say that the Investigating Agency shall be at liberty to move this Court for cancellation of the bail, if any of the aforesaid conditions is violated by the petitioner.

11. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the trial Court will not be influenced by any observations made therein.

**(Satyen Vaidya)
Vacation Judge**

February 20, 2023 (ks)