

# Vineet Kumar vs State Of Himachal Pradesh on 10 July, 2017

**Author: Sandeep Sharma**

**Bench: Sandeep Sharma**

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 806 of 2017  
Decided on July 10, 2017

Vineet Kumar

... Petitioner

Versus

State of Himachal Pradesh

Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.  
Whether approved for reporting? 1

For the petitioner

:

Mr. B.L. Soni, Advocate.

For the respondent

:

Mr. M.L. Chauhan, Additional  
Advocate General.

Sandeep Sharma, Judge (oral):

By way of present petition filed under Section 439 CrPC, prayer has been made for grant of bail in FIR No. 165/16 dated 25.10.2016, under Sections 366, 376, 511 and 506 IPC, registered at Police Station, Baijnath, District Kangra, Himachal Pradesh. ASI Mohan Singh, PS Baijnath, District Kangra, Himachal Pradesh has come present with the report. Mr. M.L. Chauhan, learned Additional

Advocate General has placed on record status report prepared on the basis of record of the investigating agency.

2. Perusal of status report, suggests that one Shri Lekh Raj son of Shri Shukru Ram, resident of village Gharnot, post office Majherna, Tehsil and Police Station, Baijnath, District Kangra, Himachal Pradesh, telephonically informed the police that Whether the reporters of the local papers may be allowed to see the judgment?

one boy(accused) was apprehended, who made an attempt to kidnap one girl, who had gone to answer the call of nature, on 25.10.2016. On the basis of aforesaid information, police recorded .

statement of victim/ prosecutrix under Section 154 CrPC, wherein she stated that she was plus two pass and her father had passed away five years back. She further stated that she alongwith her brother, who is handicapped, resides with her uncle, on the address given in the complaint. As per prosecutrix, when at around 6.40/6.50 pm on 24.10.2016, she went to her Aunt's house to answer call of nature, accused namely Loku gagged her mouth and took her to an empty house at a distance of 100-150 metres. As per prosecutrix, she requested accused to leave her but he stated that he will have sexual intercourse with her forcibly. It also emerges from the status report that accused made an attempt to commit rape with the prosecutrix forcibly but when she opposed, she was threatened. In the aforesaid incident, prosecutrix suffered bruises on her leg. However, prosecutrix was rescued later on from the clutches of accused by her uncles namely Rajinder, Lekh Raj and his son Ravi. It also emerges from the record that the bail-petitioner is in custody since 25.10.2016.

Perusal of aforesaid status report though suggests that an attempt was made by accused to kidnap prosecutrix but definitely there is no evidence of overt act, if any, on the part of bail petitioner, from where it could be inferred that an attempt was made by petitioner to commit rape. Apart from above, perusal of medical evidence adduced on record by prosecution also nowhere indicates towards commission of offence, if any, by bail petitioner under Section .

376/511 IPC. All the statements recorded by prosecution in support of prosecution story are of the relatives of prosecutrix.

Besides the statements given by Rajinder, Lekh Raj and Ravi, who are related to prosecutrix, no evidence is available on record suggestive of the fact that any person had seen bail petitioner kidnapping prosecutrix from her Aunt's house. Similarly, there is nothing in the statement of the prosecutrix from where it can be inferred that she was able to raise alarm after having been kidnapped by bail petitioner and as such it is not understood, how aforesaid persons namely Lekh Raj, Rajinder, Ravi reached site of alleged occurrence. Besides this, prosecutrix is a major. Though, aforesaid aspects of the matter would be examined in detail, by the trial Court during trial, but this Court, after having carefully perused statements of prosecutrix as well as other witnesses, more particularly MLC placed on record sees no reason to keep the bail petitioner in custody, for indefinite period. This Court also can not lose sight of the fact that bail petitioner is in custody, since 25.10.2016 i.e. approximately nine months.

3. Otherwise also, normal rule is of bail and not jail.

Apart from above, Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which conviction will entail, character of the accused, circumstances which are peculiar to the accused involved in that crime. Petitioner is local resident of District Kangra and he shall .

remain available to face the trial and to undergo imprisonment, if any, imposed upon him.

4. The Apex Court in *Prasanta Kumar Sarkar versus Ashis Chatterjee and another* (2010) 14 SCC 496, has laid down the following principles to be kept in mind, while deciding petition for bail:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

(ii) nature and gravity of the accusation;

(iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail;

(v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated;

(vii) reasonable apprehension of the witnesses being influenced; and

(viii) danger, of course, of justice being thwarted by grant of bail.

5. In view of above, the petition is allowed and the petitioner is ordered to be enlarged on bail in aforesaid FIR, subject to furnishing personal bonds in the sum of `20,000 with one surety in the like amount to the satisfaction of concerned Chief Judicial Magistrate, with following conditions:

(a) He shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing appropriate application;

(b) He shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

(c) He shall not make any inducement, threat or .

promises to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or the Police Officer; and

(d) He shall not leave the territory of India without the prior permission of the Court.

6. It is clarified that if the petitioner misuses the liberty or violate any of the conditions imposed upon him, the investigating agency shall be free to move this Court for cancellation of the bail.

7. Any observations made hereinabove shall not be construed to be a reflection on the merits of the case and shall remain confined to the disposal of this application alone.

The petition stands accordingly disposed of.

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(Sandeep Sharma) Judge July 10, 2017 (vikrant)