

Naresh Kumar Son Of Shri Kesru Ram vs State Of H.P.Non-Petitioner on 15 July, 2015

Author: P.S. Rana

Bench: P.S. Rana

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No. 956 of 2015
Order Reserved on 10th July 2015

Date of Order 15th July 2015

Naresh Kumar son of Shri Kesru Ram

....Petitioner

Versus

State of H.P.

....Non-petitioner

Coram
The Hon'ble Mr. Justice P.S. Rana, J.

Whether approved for reporting?1 Yes.

----- For the
Petitioner: Mr. R.S.Chandel, Advocate.

For the Non-petitioner: Mr. M.L. Chauhan, Additional Advocate General.

P.S. Rana, Judge.

Order:- Present bail application is filed under Section 438 of the Code of Criminal Procedure 1973 for grant of anticipatory bail in connection with FIR No. 96 of 2015 dated 1.7.2015 registered under Sections 354 and 506 IPC at P.S. Theog District Shimla (H.P.) Whether Reporters of Local Papers may be allowed to see the judgment? Yes.

2. It is pleaded that petitioner has been falsely implicated in present case. It is pleaded that petitioner and complainant belong to same place and are .

neighbours and there are disputes between the petitioner and family members of complainant. It is pleaded that any terms and conditions imposed by Court will be binding upon the petitioner and petitioner will join the investigation of case and will not tamper with prosecution witnesses in any manner. Prayer for acceptance of anticipatory bail application is sought.

3. Per contra police report filed. As per police report on dated 1.7.2015 prosecutrix Reeta Devi wife of Sanjay resident of village Batani Tehsil Theog District Shimla came in police station personally and filed criminal complaint against the petitioner. There is recital in police report that petitioner used to perform unwarranted actions towards prosecutrix with request to develop sexual relations with prosecutrix. There is further recital in police report that prosecutrix narrated the incident to her husband and thereafter matter was reported to the father and mother of petitioner but despite reporting the matter to the father and mother of accused, petitioner did not stop his unwarranted actions towards the prosecutrix.

There is further recital in police report that on dated 1.7.2015 prosecutrix went to school Chamarot along with .

her children at about 9.30 AM and when she came back then on way petitioner had concealed himself in the orchard and petitioner caught the prosecutrix and petitioner told the prosecutrix that he loves her and thereafter petitioner started touching the body of prosecutrix. There is further recital in police report that petitioner also torn the shirt of prosecutrix. There is further recital in police report that thereafter prosecutrix narrated the entire incident to her family members and Pardhan Sher Singh. There is also recital in police report that thereafter FIR was registered and investigation was conducted. There is recital in police report that site plan was prepared and torn shirt of prosecutrix took into possession. Statement of prosecutrix was recorded under Section 164 Cr.P.C. before learned Additional Chief Judicial Magistrate Theog. There is further recital in police report that petitioner is harassing the prosecutrix since many months and insisting the prosecutrix for development of sexual relations. There is further recital in police report that if anticipatory bail is granted to petitioner then petitioner would commit similar offence and petitioner would also threat the prosecution witnesses. Prayer for .

rejection of anticipatory bail application is sought.

4. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the non-petitioner and also perused the record.

5. Following points arise for determination in this bail application:-

1. Whether anticipatory bail application filed r under Section 438 Cr.P.C. by petitioner is liable to be accepted as mentioned in memorandum of grounds of bail application?
2. Final Order.

Findings on Point No.1

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and petitioner did not commit any criminal offence as mentioned in FIR cannot be decided at this stage. Same fact will be decided when case shall be disposed of on merits after giving due opportunity to both the parties to lead evidence in support of their case.

7. Another submission of learned Advocate .

appearing on behalf of the petitioner that any condition imposed by Court will be binding upon the petitioner and on this ground anticipatory bail application be allowed is rejected for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. See AIR 1978 SC 179 titled Gurcharan Singh and others Vs. State (Delhi Administration). See AIR 1962 SC 253 titled State vs. Captain Jagjit Singh. In the present case there are heinous and grave allegations against the petitioner relating to sexual harassment to the married women. It is well settled law that married woman has legal right to live in the society with dignity and honour.

No one can be allowed to attack on the dignity and honour of married women in the civilized society. Courts are under legal obligation to protect the honour and dignity of married women. In view of direct allegations against the petitioner that petitioner caught the prosecutrix and .

touched the body of prosecutrix from different parts and in view of direct allegations that petitioner also torn the shirt of prosecutrix Court is of the opinion that it is not expedient in the ends of justice to grant the anticipatory bail to the petitioner. Court is of the opinion that if anticipatory bail is granted to the petitioner at this stage then investigation of case will be adversely affected. Even w.e.f. 3.2.2013 Section 354-A, 354-B, 354-C, 354-D have been added in Section 354 IPC relating to sexual harassment, relating to criminal force to woman with intent to disrobe, relating to voyeurism, relating to stalking. Essential ingredients of offence under Section 354 IPC are (1) That assault must be on woman. (2) That accused must have caused criminal force upon prosecutrix. (3) That criminal force must have been used on the woman intending thereby to outrage her modesty.

(See AIR 2007 SCW 2198 titled Ram Kripal vs. State of M.P. Also see AIR 2004 SC 1677 titled Raju Pandurang vs. State of Maharashtra) Court is of the opinion that if anticipatory bail is granted to the petitioner at this stage then interest of State and general public will also be adversely affected.

Court is of the opinion that custodial interrogation of .

petitioner is essential in present case in order to curb sexual assault cases upon women in society.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if bail is granted to petitioner then petitioner will induce, threat and influence the prosecution witnesses and on this ground bail application be declined is accepted for the reasons hereinafter mentioned. There is apprehension in the mind of the Court that if anticipatory bail is granted to the petitioner then petitioner will induce and threat the prosecution witnesses. Since the case is at the initial stage of investigation it is not expedient in the ends of justice to grant the anticipatory bail to the petitioner keeping in view the heinous and grave allegations of sexual assault upon prosecutrix who is a married women.

Point No.1 is answered in negative.

Point No.2 (Final Order)

9. In view of my findings on point No.1 bail application filed by petitioner under Section 438 Cr.P.C. is rejected. Observations made in this order will not effect the merits of case in any manner and will strictly confine for the disposal of bail application filed under Section 438 .

of Code of Criminal Procedure 1973. All pending application(s) if any also disposed of. Bail petition filed under Section 438 of Code of Criminal Procedure stands disposed of.

July 15 ,2015(ms)

(P.S.Rana) ,
Judge .