IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.2218 of 2020
Date of Decision: 18th December, 2020.

Jagdish Kumar **...Petitioner.**

Versus

State of Himachal Pradesh **...Respondent.**

Coram:

The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner: Mr. Chandranarayana Singh, Advocate.

For the respondent: Mr. Anil Jaswal, Mr. Nand Lal Thakur, Addl. A.Gs.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge.

A boy aged 21 years, who allegedly paid for having sex with a girl aged 16 years and 9 months, has come up before this Court under Section 439 of the Code of Criminal Procedure, 1973 (CrPC), seeking regular bail on the ground that he had not allured the girl.

2. Based on a complaint of the mother of the victim, the police registered FIR No.55 of 2020, dated 22.10.2020, registered under Section 363, 343, 366(a), 376, 370(a), 506, 120-B IPC and Section 4, 6 & 17 of the POCSO Act and 5 of PITA, in Police Station, Nankhari, Distrit Shimla, Himachal Pradesh, disclosing cognizable and non-bailable offences.

3. Briefly, the allegations against the petitioner are that on 2.10.2020, at about 1.30 p.m., the victim went to a place known as Brow on the pretext of bringing clothes from the quarter and she said that she will come back on 3.10.2020. On 3.10.2020, complainant made repeated telephonic calls to her daughter but she did not attend the call. The complainant along with her husband searched the victim in her relations but she was not found anywhere. On the basis of the complaint made by the complainant, the aforesaid FIR was registered. During investigation, on

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

22.10.2020, at about 11.30 p.m. the victim was recovered from Shingla Helipad and her statement under Section 161 Cr.P.C. was recorded. The victim in her statement has stated that she was enticed away by Rukmani Devi and she kept her in her quarter till 13.10.2020 and on 13.10.2020, at about 8.00 p.m., she was taken by Rukmani towards Sainj, Kingal side and she was handed over to the applicant. During night, victim stayed in the hotel with the applicant and during night, he committed sexual intercourse with her. On 14.10.2020, the applicant dropped her and Rukmani at Rampur and on the same day at about 8 p.m., Rukmani threatened the victim and took her again to the same hotel and handed over her to the applicant. During the night of 14.10.2020, at about 8 p.m., the applicant dropped her at Rampur and thereafter she lived in the quarter of Rukmani. On 17.10.2020, at about 10 p.m. Rukmani called Sahil and the victim had a talk with Sahil. On 18.10.2020, at about 8 a.m. Sahil made a telephonic call on the telephone number of the victim and he had a talk with Rukmani. Sahil called the victim along with her clothes and bag etc. near Telephone Exchange Rampur and thereafter he took the victim to his room at Racholi. On 21.10.2020 and 22.10.2020, Sahil forcibly committed sexual intercourse with her and on 23.10.2020, Sahil let the victim near the hotel of Rukmani. Rukmani had given ₹600/- to the victim and had asked her not to disclose the matter to anyone otherwise she would done her to death. On 23.10.2020, the victim was recovered and on 24.10.2020, she was got medically examined at MGMSC, Khaneri and the doctor has opined that sexual intercourse was committed with the victim. On 24.10.2020, the applicant was arrested and clothes were taken into possession. The statement of victim under Section 164 Cr.P.C. was got recorded.

4. I have heard the counsel for the parties and gone through the status report.

5. Mr. Chandernarayana Singh, Advocate submits that as per the prosecution case, it was the Rukmani, who had allured the victim and not the accused. Based upon the prosecution case, he further submits that there is no allegation of any threat, allurement, struggle or opposition at the end of the victim, in case she had been subjected to forcible sexual intercourse or any coitus whatsoever. He further submitted that the petitioner is the eldest son in the family and is supporting his family financially by working in a hotel. Investigation is complete and his further incarceration is not required.

6. To the contrary, Mr. Anil Jaswal, learned Additional Advocate General submits that as per date of birth certificate, the victim was born on 21st January, 2004, as such she was much below 18 years of age when she could have consented. Learned Additional Advocate General further argued that the absence of injury, threat, struggle allurement or opposition would come into play only when the petitioner had completed the age of consent, whereas it was a case of sexual assault. The case is that the victim has very categorically stated that she was sexually assaulted initially by petitioner and after that by Sahil and she was detained by Rukmani.

7. Learned Additional Advocate General submits that it has come in the statement of the victim that for the first time in her life she had met the petitioner when she had visited the hotel to have sex with her. He further submits that a young girl would not do sex for pleasure with a stranger, when specific allegations are that it was Rukmani, who was taking money from the customer to do sex with her.

8. Given the fact that the age of the victim is less than 18 years i.e. 16 years and 9 months, as such the question of consent does not come into play while forcing by someone to do sex for money. It is not a case where a minor girl had coitus with her boyfriend of close age group. The allegation are very categoric of being forced into the sex trade by Rukmani and the petitioner as well as one more person subjecting her to coitus.

9. Given above, there is no merit in this petition and the same is accordingly dismissed.

10. Any observation made hereinabove is neither an expression of opinion on the merits of the case, nor shall the trial Court advert to these comments.

(Anoop Chitkara),
Judge.

December 18, 2020 (ps)