IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr.MP(M) No. 2223 of 2020

Date of decision: December 31, 2020.

Kuljit Kaur @ Shallu .....Petitioner.

Versus

State of Himachal Pradesh .....Respondent.

Coram

Ms. Justice Jyotsna Rewal Dua, *Judge.*

Whether approved for reporting?[1]

For the petitioner : Mr. N.K. Thakur, Senior Advocate with Mr. Ashok Kumar, Advocate.

For the respondent : Mr. Anil Jaswal, Addl. AG.

(through Video Conferencing).

Jyotsna Rewal Dua, *Judge (Oral)*

The petitioner is a lady, aged 54 years and mother of two children. She has been accused of offences under Sections 376(2)(L), 384, 506 and 120(B) of Indian Penal Code. FIR No. 63/2020 in this regard has been registered on 7.12.2020 at Police Station, Chintpurni, District Una. Instant bail petition has been preferred by her under Section 438 of Code of Criminal Procedure.

2. The FIR was registered on the basis of a written complaint lodged at Police Station, Chintpurni on 7.12.2020 by

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

the husband of the victim to the effect that on 11.11.2020 his wife (victim) informed him about her sexual exploitation in the hands of one Narinder Kumar, resident of village Dharamshala Mahantan, District Una and her subsequent blackmail on that count by accused Narinder Kumar as well as by the petitioner.

3. The case of the prosecution as it comes out cumulatively from the status report and from the appended record is that the victim got acquainted with Narinder Kumar on 'Tiktok' in the year 2018. Said Narinder Kumar allegedly started demanding money from her within a month of their acquaintance. The victim used to visit a gym at Kurukshetra (Haryana) where the petitioner was employed as a gym trainer. The victim aged around 35 years is a house wife. At time when she was unable to talk to accused Narinder Kumar on phone in confines of her home, then she used to talk to him in the above described gym. This was statedly observed by the petitioner, in whom the victim confided her problem. On petitioner's insistence, the victim disclosed to her the telephone number of accused Narinder Kumar. Further allegations are that the petitioner on her own called Narinder Kumar to her home in Kurukshetra, where the victim also met him. Against victim's wishes, physical relations were established with her by Narinder Kumar many times in October/November 2018. This was all facilitated by the petitioner. The 'act' was allegedly captured on

camera/video. Subsequently, the victim was blackmailed by Narinder Kumar as well as by the petitioner. Under the threat of blackmail, the victim had paid around Rupees twenty two lacs to accused Narinder Kumar and around Rupees ten lacs to the bail petitioner. Accused Narinder Kumar was arrested on 23.12.2020.

4. Learned Senior Counsel for the petitioner argued that petitioner is innocent and has been falsely implicated with the offences. Petitioner is aged 54 years and belongs to respectable family, having children of her own and has no criminal antecedents. Learned Senior Counsel further contended that offences, if any, are alleged to have been committed in the State of Haryana, therefore, in terms of Section 177 of Code of Criminal procedure, the FIR in question could not have been registered in State of Himachal Pradesh. He further submitted that pursuant to the interim protection granted by a co-ordinate Bench of this Court to the petitioner on 18.12.2020, she has repeatedly joined the investigations as and when directed by the investigating agency. In case of her enlargement on bail, the petitioner will abide by all the terms and conditions, which may be imposed upon her and shall continue to join and co-operate the investigating agency.

While opposing the bail petition, learned Additional Advocate General argued that petitioner is accused of serious and heinous offences. The investigation in the case is at an

initial stage. The petitioner though has joined the investigations but is not co-operating with the investigating agency, therefore, her custodial interrogation is warranted.

5(i) Having gone through the record made available by the respondent, certain aspects which are relevant for adjudicating this bail petition may be noticed. The victim had statedly narrated her tale of sexual exploitation and blackmail in the hands of Narinder Kumar and petitioner to her husband/complainant on 11.11.2020. The incidents were alleged to have happened in October/December, 2018. The complaint, however, was lodged by the husband of the victim on 7.12.2020 i.e. almost a month later from the alleged date of narration of events by the victim and almost two years later from the date of alleged offences.

5(ii) The husband of the victim on coming to know of the sexual exploitation and subsequent blackmail of his wife, immediately on 11.11.2020 rushed to village Dharamshala Mahantan in district Una and allegedly executed certain agreements on different dates with accused Narinder Kumar for getting back the money and articles statedly received by him from the victim. The agreements do not mention about any video/camera clippings regarding the alleged incidents. There is no mention in the agreements about involvement of the bail petitioner.

5(iii) The victim is a mature lady, aged around 35 years. She is stated to be a mental patient. Some of her medical prescription slips covering period from the year 2010 to 2016 are on record but what is the exact nature of her disease and whether she is still suffering from this disease is not discernible at this stage. The MLC of the victim mentions about her disclosing the fact that she had no sexual contact with the accused after November 2019 and that she also had no sexual contact with her husband ever since then.

5(iv) The case of petitioner is different from that of accused Narinder Kumar. In the facts and circumstances of the case, it cannot be said at this stage that petitioner had facilitated victim's alleged sexual exploitation, if any, in the hands of accused Narinder Kumar or was guilty of this offence or that she had blackmailed her. There are the issues which are to be proved during trial by leading cogent evidence. The offence under Section 384 IPC carries punishment for three years, whereas the offence under Section 506 IPC is bailable carrying punishment of two years. The petitioner has no criminal antecedents and is resident of Thanesher Kurukshetra (Haryana). She has reportedly joined the investigation multiple times as and when directed by the investigating agency. Regarding her alleged non-cooperation, suffice to observe that it is for the investigating agency to bring out the truth in accordance with

law. There is no allegation in the status report about petitioner's intimidating the victim or the complainant during the currency of interim bail granted to her. These aspects can even otherwise be taken care of by imposing stringent conditions.

5(v) In respect of objection raised by learned Senior Counsel regarding territorial jurisdiction for registering the FIR, it will be apposite to take note of a recent judgment passed by Hon'ble Apex Court in Transfer Petition (CRL.) No. 456 of 2019, titled **Kaushik Chatterjee** versus **State of Haryana & ors.,** decided on 30.9.2020, wherein the petitioners were seeking transfer of three criminal cases registered against him on ground of incompetence of the Court on count of territorial jurisdiction. The Apex Court observed that:-

> *"18.....the question of territorial jurisdiction in criminal cases revolves around (i) place of commission of the offence or (ii) place where the consequence of an act, both of which constitute an offence, ensues or (iii) place where the accused was found or (iv) place where the victim was found or (v) place where the property in respect of which the offence was committed, was found or (vi) place where the property forming the subject matter of an offence was required to be returned or accounted for, etc., according as the case may be.....".*
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> *"19. While jurisdiction of a civil court is determined by (i) territorial and (ii) pecuniary limits, the jurisdiction of a criminal court is determined by (i) the offence and/or (ii) the offender. But the main difference between the question of jurisdiction raised in civil cases and the question of jurisdiction arising in criminal cases, is two fold.*
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> *(i) The first is that the stage at which an objection as to jurisdiction, territorial or pecuniary, can be raised, is regulated in civil proceedings by Section 21 of the Code of Civil Procedure, 1908. There is no provision in the Criminal Procedure Code akin to Section 21 of the Code of Civil Procedure.*

(ii) The second is that in civil proceedings, a plaint can be returned, under Order VII, Rule 10, CPC, to be presented to the proper court, at any stage of the proceedings. But in criminal proceedings, a limited power is available to a Magistrate under section 201 of the Code, to return a complaint. The power is limited in the sense (a) that it is available before taking cognizance, as section 201 uses the words "Magistrate who is not competent to take cognizance" and (b) that the power is limited only to complaints, as the word "complaint", as defined by section 2(d), does not include a "police report".

After considering the definition clause, chapter-XIII and fate of irregular proceedings under Chapter XXXV of Cr.P.C., it was observed in paras 33 and 38 as under:-

"33. In other words, the jurisdiction of a criminal Court is normally relatable to the offence and in some cases, to the offender, such as cases where the offender is a juvenile (section 27) or where the victim is a women [the proviso to clause (a) of section 26]. But Section 461(l) focuses on the offender and not on the offence."

"38. From the above discussion, it is possible to take a view the words "tries an offence" are more appropriate than the words "tries an offender" in section 461 (l). This is because, lack of jurisdiction to try an offence cannot be cured by section 462 and hence section 461, logically, could have included the trial of an offence by a Magistrate, not empowered by law to do so, as one of the several items which make the proceedings void. In contrast, the trial of an offender by a court which does not have territorial jurisdiction, can be saved because of section 462, provided there is no other bar for the court to try the said offender (such as in section 27). But Section 461 (l) makes the proceedings of a Magistrate void, if he tried an offender, when not empowered by law to do."

The legal position was summed up in following paras-

"39. But be that as it may, the upshot of the above discussion is (i) that the issue of jurisdiction of a court to try an "offence" or "offender" as well as the issue of territorial jurisdiction, depend

> *upon facts established through evidence (ii) that if the issue is one of territorial jurisdiction, the same has to be decided with respect to the various rules enunciated in sections 177 to 184 of the Code and (iii) that these questions may have to be raised before the court trying the offence and such court is bound to consider the same".*
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> *"40. Having taken note of the legal position, let me now come back to the cases on hand."*
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> *"41. As seen from the pleadings, the type of jurisdictional issue, raised in the cases on hand, is one of territorial jurisdiction, atleast as of now. The answer to this depends upon facts to be established by evidence. The facts to be established by evidence, may relate either to the place of commission of the offence or to other things dealt with by Sections 177 to 184 of the Code. In such circumstances, this Court cannot order transfer, on the ground of lack of territorial jurisdiction, even before evidence is marshaled. Hence the transfer petitions are liable to be dismissed. Accordingly, they are dismissed."*

These aspects need not be gone into at this stage. However, in view of above judgment, it shall be open for the petitioner to raise this question at an appropriate stage in accordance with law.

In view of the above discussion, the instant petition is allowed and the interim protection granted in favour of the petitioner vide order dated 18.12.2020 is confirmed subject to following conditions:

> (i) Petitioner is directed to join the investigation of the case as and when called for by the Investigating Officer in accordance with law. She shall fully cooperate the Investigating Officer and will appear before him in the concerned police station as and when called in accordance with law;
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> (ii) Petitioner shall not temper with the evidence or hamper the investigation in any manner whatsoever:
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> (iii) Petitioner shall not contact the complainant or his family members in any manner whatsoever. Petitioner shall not contact, threaten or intimidate the victim in any manner whatsoever.

(iv) Petitioner will not leave India without prior permission of the Court.

(v) Petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;

(vi) In case of launching of prosecution, petitioner shall attend the trial on every hearing, unless exempted in accordance with law.

(vii) Petitioner shall inform the Station House Officer of the concerned police station about her place of residence during bail and trial. Any change in the same shall also be communicated within two weeks thereafter. Petitioner shall furnish details of his Aadhar Card, Telephone Number, E-mail, PAN Card, Bank Account Number, if any.

In case of violation of any of the terms & conditions of the bail, respondent-State shall be at liberty to move appropriate application for cancellation of the bail. It is made clear that observations made above are only for the purpose of adjudication of instant bail petition and shall not be construed as an opinion on the merits of the matter. Learned trial Court shall decide the matter without being influenced by above observations.

With the aforesaid observations, the present petition stands disposed of, so also the pending miscellaneous applications, if any.

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Jyotsna Rewal Dua
Judge.

December 31, 2020,
(*vs*)