IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP (M) No.3255 of 2023
Reserved on : 02.01.2024
Decided on : 10.01.2024

Yaman ...Applicant

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the applicant : Mr. T.S. Chauhan, Advocate.

For the respondent : Mr. Tejasvi Sharma, Additional Advocate General, with Ms. Leena Guleria, assisted by SI Chetan Singh, Police Station Balh, District Mandi, H.P.

Virender Singh, Judge

Applicant-Yaman, apprehending his arrest, in FIR No.293/23, dated 25.12.2023, registered under Sections 376, 341 and 506 of the Indian Penal Code (hereinafter referred to as 'the IPC') and Section 6 of the Protection of Children from Sexual Offences Act, (hereinafter referred to as the POCSO Act), with Police

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

Station, Balh, District Mandi, H.P., has filed the present application, under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'CrPC').

2. By way of the present application, the indulgence of this Court has been sought to direct the I.O./police of Police Station, Balh, to release the applicant on bail, in the event of his arrest, in the above noted case.

3. According to the applicant, after qualifying his +2 examination, he has done diploma in electricity and started working in green book companying in District Mandi.

4. According to the applicant, he is an innocent person and has falsely been implicated, in the present case, as he has nothing to do with the alleged offences, for which, he has been named, as accused, in the FIR, in question.

5. Apart from this, it has also been pleaded that it seems that the prosecutrix was in a romantic relationship with someone else and the petitioner has falsely been implicated in this case.

6. According to the petitioner, he is permanent resident of District Mandi, as such, he has deep roots in the society.

7. On the basis of the above facts, learned counsel for the applicant, has given certain undertakings, on behalf of the applicant, for which, he is ready to abide by, in case, any direction is issued to the Police/Investigating Officer, under Section 438 Cr.PC.

8. On all these submissions, a prayer has been made to allow the application.

9. When put to notice, the police has filed the status report, disclosing therein that on 25.12.2023, HHC Ajit Singh No.648 brought a complaint, which was moved by the mother of the child victim, disclosing therein that on 23.12.2023, at about 6.00 p.m., a call was received from mobile number 82195-75621, on the mobile of the daughter of the complainant (child victim).

9.1. When the complainant, inquired from the child victim, as to who was calling her, she did not give the satisfactory answer.

9.2. After sometime, the complainant had searched for her daughter, but, she was not found. When she switched on the mobile phone of the child victim, then, she found the mobile number 82195-75621, in it. When, the said number was redialed, the same was picked-up by a boy.

9.3. Thereafter, the complainant inquired from the said person, as to who is he and why he had called her daughter, upon which, the said person, who had pick-up the phone, has disclosed to her that her daughter had tortured him. When, complainant inquired about the address of the said person, he has not disclosed the address. Thereafter, the said person had told her to do whatever she wanted to do, and disconnected the phone.

9.4. The complainant had waited for her daughter till morning, but, she did not come.

9.5. On the basis of the above facts, she has apprehended that her daughter has been enticed away by some unknown person and prayed that action be taken.

9.6. Since, the age of the child victim was found to be less than 18 years, as such, the FIR, under Section 363 IPC was registered.

9.7. Thereafter, the police has made correspondence to the service providers to obtain the CDRs of phone number of child victim and the mobile number, from which the call was made to the complainant. On 25.12.2023, the complainant has produced the matriculation certificate of the victim, according to which, her date of birth is 5.2.2006.

9.8. On 27.12.2023, the police received the information from the complainant that the child victim has come back, upon which, HC Manu Rana, reached at the house of the complainant. The child victim, on inquiry, disclosed that a person, namely Yaman, had done wrong act with her.

9.9. Thereafter, HC Manu Rana, has informed the Incharge, Police Station, on whose direction, he has taken the child victim for medico-legal examination to Civil Hospital Ratti. Thereafter, the further investigation was conducted by PSI Chetan Singh.

10. During investigation, the statement of child victim was recorded under Section 161 Cr.PC, who has disclosed that on 23.12.2023, Yaman (applicant), had

called her and requested her to come to meet him. When, the child victim refused to do so, then, he had threatened her to kill and also demanded money or to come to meet him.

11. When, the child victim was talking with Yaman, then, her mother had caught her, as such, she frightened. According to her, when, her mother was busy, then child victim found the opportunity and at about 6.00 p.m., she left her home. Yaman met her at Bhangrotu. He took her to residential quarter at Nauru, in his black coloured car, where she was raped.

12. Thereafter, accused directed the child victim to go back to her home. The child victim had frightened. According to her further deposition, Yaman earlier had also taken her to his quarter on 5-6 occasions and had raped her. Yaman is known to her for the last 3-4 months. He is resident of Galma and store of green book company is at Nauru, where Yaman was working.

13. The mother of the child victim is running a tea kiosk, in front of the Medical College. Thereafter, the child victim has disclosed the fact to her friend Rubby that she

has left her home. During day time, she stayed in the quarter of Rubby and during evening, she used to go to their old house, in order to sleep there.

14. On 27.12.2023, she has informed her father from Ner Chowk that she is coming back to her home.

15. On the basis of the above facts, the police has added Section 376 and 506 IPC and Section 6 of the POCSO Act, in the FIR.

16. Thereafter on 29.12.2023, the child victim was produced before the Additional Chief Judicial Magistrate-I, Mandi and her statement under Section 164 Cr.PC, has been recorded. According to her, one person used to torture her on phone and also demanded money from her and also compelled her to do wrong act. He also used to threaten her to kill.

17. According to the further deposition of the child victim, the said person had called her. She left her home, however, said person did not meet her. Thereafter, she had gone to her friend's house and remained there for about four days.

18. On 5th day, she had called her father by apprising him that she is coming back. In the meanwhile, Anjali Madam came there, and on inquiry, the child victim has disclosed her that a boy has tortured her, threatened her to kill, also compelled her to do wrong act and number of times, he had committed wrong act with her.

19. Since, the police has found contradictions in the statements of the child victim, recorded on 27.12.2023 under Section 161 Cr.PC and under Section 164 Cr.PC, recorded on 29.12.2023, as such, her statement under Section 161 Cr.PC was again recorded on 30.12.2023.

20. In the statement under Section 161 Cr.PC, the child victim has deposed that on 23.12.2023, Yaman called her repeatedly on phone and compelled her to come. At about 6.00 p.m., she had gone out of the home to meet Yaman (applicant), but, Yaman was not found there. Thereafter, she had gone to the quarter of her friend and stayed there till 27.12.2023. She has further deposed that Yaman Sharma (applicant), in his quarter at Nouru had forcibly raped her on 5-6 occasions. Lastly, Yaman

Sharma (applicant) has raped her in the month of October 2023.

21. On the basis of the above facts, a prayer has been made to dismiss the application.

22. Although, there are contradictions in the statements of the child victim on different stages of the investigation, but, on this count, the entire prosecution story cannot be thrown away.

23. Considering the age of the child victim, the effect of these variations is to be considered by the learned trial Court.

24. One thing is common in the statement under Section 161 Cr.PC, as well as, in the statement under Section 164 Cr.PC, that the accused had allegedly raped the child victim repeatedly.

25. The investigation, is at the initial stage and in case, any direction is issued under Section 438 Cr.PC, it would amount to interference with the investigation of the case, which is not permissible under the law.

26. Although, the applicant is a young boy of 20 years, but, considering the seriousness of the allegations

levelled against him, by the child victim, this Court is of the view that the applicant is not able to make out a case for any relief, under Section 438 Cr.PC. Consequently, the application is dismissed.

27. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the merits of the case, as these observations, are confined, only, to the disposal of the present bail application.

(Virender Singh)
Judge

January 10, 2024*(ps)*