

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 656 of 2021

Reserved on: April 24, 2021

Date of Decision: May 5, 2021

Suresh Kumar

...Petitioner,

Versus

State of H.P.

...Respondent.

Coram:

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

Whether approved for reporting?¹ YES

For the petitioner: Ms. Rittika Jassal, vice Mr. Aditya Thakur, Advocate.

For the respondent: Mr. Nand Lal Thakur, Additional Advocate General.

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
105 of 2020	17.12.2020	Rajgarh, District Sirmaur, H.P.	376 of the IPC and Section 4 of POCSO Act.

Anoop Chitkara, Judge.

The petitioner, aged 26 years, in custody since 18-12-2020, for letting the victim aged 17 years, who was his friend, take the lift in his Jeep, and after that, instead of allowing her to alight, bringing the vehicle to an isolated place and then after intimidation and establishing coitus, despite her protests, has come up before this Court seeking regular bail,

2. Earlier, the petitioner had filed a petition under Section 439 CrPC before this Court, which was registered as Cr.MP(M) No.210 of 2021, but the same was dismissed with liberty to file fresh.

¹

Whether reporters of Local Papers may be allowed to see the judgment?

3. In Para 2 of the bail application, the petitioner declares having no criminal history. The status report also does not mention any criminal past of the accused

4. Briefly, the allegations against the petitioner are that on 17.12.2020, the victim was waiting for the bus at the bus stand. Around noon, accused, who was her friend, reached the said place in his pickup Jeep and offered that he would drop her at her home. The victim boarded the vehicle, but the accused took a detour on the way. On enquiry by the victim, he said that he would take a U-turn ahead and drop her at her home. However, he did not do so, took the Jeep to a secluded place, and started inappropriately touching the victim. The girl said NO to him but instead, the accused told her that if she would cry, then he would force himself upon her. He then asked her if she would marry him, to which the girl said no. After that, the accused undressed the victim and had sexual intercourse with her. After doing so, he left for Solan, and the victim came home by bus. On reaching home, she informed her mother about the incident. Based on these allegations, the Police registered the FIR mentioned above.

5. I have heard Ms. Ritika Jassal, Ld. Counsel for the accused. She has argued that the victim stated in her statement under S. 164 CrPC that she was friend of the accused, and her taking lift in his vehicle further proved that the friendship was cordial, resultantly, the sexual intercourse, if any, took place with active consent and without any force on her by the accused. Thus, the conduct of the victim would entitle the accused for grant of bail. On the contrary, Mr. Nand Lal Thakur, Ld. Additional Advocate General for the State, drew attention to Para 3 of the petition wherein the allegations are that the Police was trying to save the actual culprits.

REASONING:

6. The victim had left her home at 10 in the morning to visit a Doctor. On reaching home, she narrated the unfortunate incident to her mother. The incident occurred in the daytime and not in the odd hours, and the victim arrived home in time. There is no mention of the victim reaching home late or anyone enquiring her about being seen with a boy. Had she consented to the coitus, then there was no reason for her to reveal it to her mother. Since she had gone to visit the doctor, she could have easily made up excuses to come home late from the doctor's clinic, e.g.,

the doctor was not available, there were many patients, or that she could not find a bus, etc. The question involved here is what prompted the girl to inform about the incident to her mother. It is not the case that she reached home late in the night or that her parents questioned her or started a search looking for her. She would have kept it discreet because, as per her version, no one had noticed them. If the sexual act was with her will, she would not have told anyone about the same and tried to conceal the same. The victim voluntarily narrated the incident to her mother, prima facie points towards the genuineness of the incident. It would be correct to say that it was courageous for the victim girl to talk about the unfortunate incident to her mother and later come forward and report the same with the police.

7. Furthermore, the scientific evidence points towards the presence of blood and semen on the victim's underwear. It also states that no physical injuries were found on her body. As stated by the victim in her Section 164 CrPC statement that she had said NO for sex to the accused, and the accused told her not to cry; otherwise, he would force himself upon her. In such circumstances of threat and coercion in a secluded area, the victim was forced to cooperate with the accused, which explains the absence of physical injuries on her body, and the presence of semen, indicating unprotected sex.

8. Neither the absence of resistance nor the unwilling submission implies consent in any language. She explicitly said no to the accused, but he did not stop. When the curriculum does not include the proper sex education, the children raised by such societies fail the women time and again. NO MEANS NO- The simplest of sentences have become the most difficult for some men to understand. No does not mean yes, it does not mean that the girl is shy, it does not mean that the girl is asking a man to convince her, it does not mean that he has to keep pursuing her. The word NO doesn't need any further explanation or justification. It ends there, and the man has to stop. Be that as it may, the victim, in this case, said no to the accused when he started touching her, but he continued. It nowhere implies consent, or zeal and desire to explore and feel each other in romantic love.

9. Counsel for the parties have also made several other arguments. Still, given that this Court is not inclined to grant bail, on the reasons mentioned above,

discussion of the same will be an exercise in futility. Any detailed analysis of the evidence may prejudice the case of the prosecution or the accused.

10. Given above, in the facts and circumstances peculiar to this case, at this stage, the petitioner fails to make out a case for bail. The petition is dismissed with liberty to file a new bail application in case of changed circumstance.

11. I express my gratitude to my Law Clerk-cum-Research Assistant, Ms. Apoorva Maheshwari, for excellent perspective.

12. 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.

The petition is dismissed.

**Anoop Chitkara,
Judge.**

May 5, 2021 (*ks*).