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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MP(M) No.763 of 2021
Reserved on: 05.05, 2021
Date of Decision: 06.05.2021**

Rohit Kumar **...Petitioner.**
Versus
State of H.P. **...Respondent.**

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

Whether approved for reporting?¹NO

For the petitioner: Mr.Rajesh Mandhotra, Advocate.

For the respondent: Mr. Nand Lal Thakur Addl. Advocate General .

THROUGH VIDEO CONFERENCE

FIR No.	Dated	Police Station	Sections
168	03.08.2020	Nagrota Bagwan, District Kangra, HP	341, 323, 354, 354B, 354C, 376, 376D, 506 read with Section 34 IPC and 6 of POCSO Act and 67(B) of IT Act

Anoop Chitkara, Judge.

The petitioner, incarcerated upon his arrest for alluring and raping a minor girl, has come up before this Court seeking regular bail.

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

2. Earlier, the petitioner had filed the following bail petition:

(a) Bail Application No.11-P/XXII/2021, filed before learned Special Judge, Fast Track Special Court, Kangra, HP, which was dismissed vide order dated 27.03.2021.

3. Ld. Counsel for the bail petitioner states on instructions that the petitioner has no criminal past relating to the offences prescribing sentence of seven years and more, or when on conviction, the sentence imposed was more than three years. The status report also does not mention any criminal past of the accused.

4. Briefly, the allegations against the petitioner are that on 03.08.2020, the Investigating Officer recorded the statement of the victim under Section 154, Cr.P.C. The victim mentioned her age as 17 years. The statement is to the following effect:-

- (i) The victim was student of 10+2 and she was friend of one Sandeep Kumar. On 04.07.2020 she met her friend Sandeep Kumar and he decided to drop her on his scooty. At about 1:00 p.m., when both of them reached around one kilometer ahead of Rani-Ka-Bharoh, then Sandeep parked the scooty on the side of the road and both of them walked 20-30 meters below the road to have gossips.
- (ii) After 5-7 minutes, 6 boys came there. One of them was Pravesh Kumar (A-2), who was already known to the victim. Immediately on arrival, they slapped both of them.

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- (iii) After that they forced the victim to undress. When they had made the victim to remove her clothes, then Ravi Kumar (A-1) started making her nude video. When she tried to cover her face with hands and pull up her salwar, then they threatened her to leave the salwar downward and uncovered her face. In the meantime, other boys were continuously beating Sandeep Kumar. These persons were addressing each other with names of Rohit (A-3), Manish Kumar (A-6), Vineet (A-4) and Akshay (A-5).
- (iv) Ravi Kumar (A-1) appeared to be eldest to them and he caught hold of the victim from her arm and took her to the bushes, where she was made to remove her clothes and he committed rape upon her. When she resisted, then he slapped her. In the meanwhile, other boys had caught hold of Sandeep, so that he could not save her. While leaving, they threatened the victim not to reveal this incident to anyone, otherwise they will make her video viral.
- (v) After some days, she came to know that they had uploaded the video and then she informed the police, which led to the registration of the present FIR.

5. Ld. Counsel for the petitioner contends that incarceration before the proof of guilt would cause grave injustice to the petitioner and family.

6. On the contrary, the State contends that the Police have collected sufficient evidence against the bail petitioner. Another argument on behalf of the State is that the crime is

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heinous, the accused is a risk to law-abiding people, and bail might send a wrong message to society.

7. The conduct of the accused is so deplorable that it would make the life of young friends belonging to the opposite gender as miserable. They took advantage of her being with the male friend and the main accused forced himself upon her and they not only did that, they also made a video and made it viral. The accused appears to be pervert and, as such, there is no question to grant the bail to the accused.

8. Given the age of the victim to be just 22 years, it shall be open to the accused/petitioner to file fresh bail application in the changed circumstances or in case the trial is delayed.

9. Ld. Counsel for the petitioner referred to certain statements and memos from the police report, prepared under section 173(2) CrPC, copies of which the accused had duly received in compliance to S. 207 CrPC. However, the documents which the Ld. Counsel referred were neither filed with the petition, nor its copies supplied to the Court and the State. Thus, the Court cannot base any finding on a document in the Counsel's brief and not on Court's file.

10. Counsel for the petitioner has 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

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exercise in futility. Any detailed analysis of the evidence may prejudice the case of the prosecution or the accused.

11. 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.

12. This order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation per law.

13. 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 dismissed.

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**Anoop Chitkara,
Judge.**

May 06, 2021
(R.Ata)