

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

Cr. MP(M) No. 505 of 2025

Reserved on : 2.4.2025

Decided on : 4.4.2025

Deepak Kumar

...Applicant

Versus

State of H.P.

...Respondent

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

**For the Applicant : Mr. Divya Raj Singh,
Advocate.**

**For the Respondent : Mr. Tejasvi Sharma and Mr.
Mohinder Zharaick, Addl.
AG, for respondent No. 1.**

None for respondent No. 2.

Virender Singh, Judge

The applicant has filed the present application, under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'the B.N.S.S.') in case FIR No. 66 of 2024, dated 27.12.2024, under Sections 363, 366 and 376 of Indian Penal Code (hereinafter referred to as 'the IPC') and Sections 6 and 21 of Protection of

Children from Sexual Offences (hereinafter referred to as 'the POCSO Act') registered with Women Police Station, Chamba, District Chamba, H.P.

2. According to the applicant, he has been falsely implicated in the present case, as nothing has been found in the investigation, connecting him, with the alleged crime.

3. According to the applicant, he and the complainant belong to tribal community, and as per the custom, prevailed in their community, they entered into wedlock, with the consent of their parents, and living together peacefully.

4. According to the applicant, there has been no complaint qua missing of the child victim. This fact has been pleaded to show that the parties are happily living together, after marriage.

5. It is the further case of the applicant that the child victim is living with him, as his wife. So far as the age of the child victim is concerned, the applicant has relied upon her statement, recorded under Section 183 of BNSS, before the learned JMFC.

6. The investigation, in the present case, is stated to be completed, and according to the applicant, no useful purpose would be served by keeping him, in the judicial custody.

7. The applicant has also filed bail application, bearing No. 11 of 2025, before the learned Special Judge, Chamba, Division, Chamba, H.P., however, the same was dismissed, on 16.1.2025.

8. The applicant, through his counsel, has given certain undertakings, for which, he is ready to abide by, in case, ordered to be released on bail.

9. On all these submissions, Mr. Divya Raj Singh, learned counsel appearing for the applicant, has prayed that the bail application may kindly be allowed.

10. When, put to notice, Police filed status report, disclosing therein that on 27.12.2024, on the basis of information received, lady ASI Sunita Kumari, alongwith other police officials, reached Pt. Jawahar Lal Nehru Medical College, Chamba. In the labour room of the said hospital, mother of the child victim got recorded her statement, disclosing therein that she is residing at the address, as

mentioned in the application. According to her, she is a home-maker, having four children, out of whom, two are boys and two are girls. The child victim is her youngest daughter, aged about 16 years.

10.1 According to her further statement, the child victim was enticed away by applicant Deepak Kumar, in the month of February, 2024. She has further stated in her complaint that the complainant, as well as, her husband, due to their weak financial condition, and in order to avoid social humiliation, had not lodged any complaint, regarding this fact. From the month of February, 2024, applicant Deepak Kumar kept their daughter, in his house.

10.2 She has further mentioned in the complaint that on 26.12.2024, mother of applicant Deepak Kumar informed the complainant regarding labour pain of the child victim and apprised them that they are bringing the child victim to the hospital. On 27.12.2024, in the morning, complainant, as well as, her husband, are stated to have reached Chamba, where, applicant Deepak Kumar and his mother took the child victim to hospital. Lastly, she has deposed that applicant Deepak Kumar enticed away the child victim and

kept her in his house, without solemnizing marriage with her and ravished her. Resultantly, she got pregnant. As such, she has prayed that action be taken by the Police, upon which, the Police has registered the FIR against the applicant.

10.3 During investigation, the child victim was produced before the Doctor, for medico legal examination, but, the child victim, who was in the custody of her mother, has refused to get herself medico legally examined. However, the Medical Officer has obtained the FTA card of the child victim, and she was admitted in the labour room. She is stated to have given birth to a girl child, on 27.12.2024. The blood samples of newly born child were also collected on the FTA card.

10.4 Applicant Deepak Kumar is stated to be present alongwith the child victim in the hospital. According to the police, he was detained there.

10.5 It has further been mentioned in the status report that on inquiry, applicant disclosed that he is a taxi driver by profession and used to visit the village of child victim, where he has developed acquaintance with the child

victim and started liking her. Thereafter, as per the status report, applicant Deepak Kumar requested the child victim to get married to him. However, in the month of February, 2024, applicant enticed her away in order to solemnize marriage with her and brought her to his house. However, due to age of the child victim, they could not get married.

10.6 It is the further case of the Police that on 27.12.2024, applicant was arrested and he was also medico legally examined. Physical evidence was collected by the Doctor and the same was handed over to the Police.

10.7 On 31.12.2024, the child victim was produced in the custody of her mother, before CWC Committee, Chamba. As per the documents, collected regarding the date of birth of the child victim, her date of birth was found to be 17.2.2008. The spot was visited and the spot map was prepared. On 9.1.2025, the child victim was produced before the competent Court of law, where, her statement under Section 183 of BNSS was recorded.

10.8. It is the further case of the Police that parents of the applicant never informed the Police regarding the fact that their son Deepak Kumar enticed away the child victim

and kept her in his house, for about one year, and impregnated her. Thereafter, the child victim had given birth to a girl child. As such, Section 21 of the POCSO Act was added, in this case.

10.9. On 11.2.2025, father of the applicant, namely Mohan Lal and mother Bimla Devi, were bound down, under Section 35(3) of the BNSS.

10.10 As per the DNA report, the applicant was found to be the biological father of the newly born child and the child victim was found to be her biological mother.

10.11 Lastly, it has been pleaded that witnesses in this case, have not been examined. In such situation, in case, the applicant is ordered to be released on bail, he may coerce the witnesses and allure them to depose in his favour. As such, a prayer has been made to dismiss the application.

11. Learned counsel appearing for the applicant, in this case, has placed on record copy of status report, which was filed, before the learned Special Judge, Chamba, where the application for bail was moved, by the applicant. In the opening lines of the aforesaid status report, it has been mentioned that when the Police reached Chamba hospital,

then, child victim was found admitted in the labour room of the hospital, alongwith applicant Deepak Kumar, and when, the Police inquired from the child victim about his parents, then, she disclosed that they are coming to the hospital, upon which, the Police waited for them, and, thereafter, mother of the child victim got recorded her statement, whereas, in the status report, filed in this case, material fact, regarding the presence of applicant Deepak Kumar with child victim, in the labour room, has not been mentioned.

12. When, put to notice, Superintendent of Police, Chamba has submitted the explanation by stating that in para-1 of the status report, filed, in this case, it has been submitted that in order to verify the facts of report No. 2, dated 27.12.2024, lodged in daily diary of Women Police Station, Chamba, ASI Sunita Devi alongwith ASI Nikhil Kumar, Head Constable Bhag Singh No. 45, L/HHC Vimla Devi No. 507, HHC driver Sunil Kumar No. 505 reached Hospital Chamba on 27.12.2024, where child victim, alongwith her husband Deepak Kumar, was found present/admitted in the labour room, and when, ASI Sunita Kumari asked about her parents, she replied that they are

coming to Chamba Hospital, in a hired vehicle. ASI Sunita Kumari waited for them. On reaching the Hospital, they were inquired by ASI Sunita Kumari, then, the mother of the child victim got her statement recorded, under Section 173 Cr. P.C.

13. All these facts have been pleaded to show that there is no concealment of facts, whereas, the copy of Rapat No. 2, dated 27.12.2024, has not been annexed with the present status report. It has been mentioned in the present status report that on 27.12.2024, on the basis of information, lady ASI Sunita Kumari, alongwith police officials, reached in the labour room of Pt. Jawahar Lal Nehru, Medical College, Chamba, where mother of child victim got her statement recorded, whereas, in the status report, filed before the learned Special Judge, Chamba, it has been mentioned that on 27.12.2024, ASI Sunita Kumar alongwith ASI Nikhil Kumar, HHC Bhag Singh, Lady HHC Vimla Devi No. 507 and Driver HHC Sunil Kumar No. 506 reached Chamba Hospital to verify the telephonic information, which has been entered in the rojnamcha at rapat No. 2, where the child victim, was found, admitted in the hospital, alongwith

applicant Deepak Kumar. As such, it has rightly been pointed out by learned counsel for the applicant that the very presence of Deepak Kumar alongwith the child victim, in the status report, filed in this case, has actively been concealed.

14. It is expected from the Police to mention the true picture before the Court. Different versions in different proceedings is clear cut violation of the directions of this Court, as issued in Cr. M.P. (M) No. 2717 of 2024, titled as, 'Naresh Kumar versus State of Himachal Pradesh', decided on 18.12.2024. Relevant paragraph-25 of the judgment is reproduced, as under:

"25. Before parting with this Order, this Court is of the view that, it is high time for this Court to direct the Principal Secretary (Home) to the Government of Himachal Pradesh, to issue necessary directions to all the Superintendents of Police in the State, with a further direction to circulate the same amongst all the Investigating Officers, to mention all material facts, found in the investigation, in the status report(s), filed in the Court either during remand or in the bail application, before the learned Judicial Magistrate First Class/learned Additional Sessions Judge/learned Sessions Judge. In order to achieve the said goal, the Investigating Officer of the case is directed to annex the copy of the remand order/status report, filed in the Court previously, at the time of hearing of bail application, so

that clear picture could be brought to the notice of the Court, while deciding the question of releasing on bail.”

15. The very presence of the accused alongwith the child victim, in the labour room, before the police reached there, is a fact, which cannot be ignored, at this stage. Even otherwise, whatsoever has been disclosed by the applicant to the Police, cannot be taken into consideration, at this stage, as prosecution has to stand on its own legs, as no benefit could be derived from the fact, which had allegedly been disclosed by the applicant, during investigation, unless and until, the same falls within the purview of Section 27 of the Indian Evidence Act.

16. Investigation, in the present case is stated to be completed, as such, no useful purpose would be served by keeping the applicant in the judicial custody, that too, for indefinite period, as chances of conclusion of trial, against the applicant, in near future, are not so bright.

17 Even otherwise, in the status report, the prayer has not been made regarding custodial interrogation of the applicant. Moreover, bail application cannot be rejected, as a

matter of punishment, as pre-trial punishment is prohibited under the law.

18. The child victim was allegedly enticed away by the applicant, in the month of February, 2024 and till 27.12.2024, no efforts have been made by the parents of the child victim to lodge the FIR. However, explanation, which has been given by the mother of the child victim, in her statement, recorded under Section 180 of BNSS, will be proved, during the trial.

19. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

20. Consequently, the applicant is ordered to be released on bail in case FIR No. 66 of 2024, dated 27.12.2024, registered under Sections 363, 366 and 376 IPC and Sections 6 and 21 of POCSO Act, registered with Women Police Station, Chamba, District Chamba, H.P., on his furnishing personal bond in the sum of Rs. 50,000/-, with one surety in the like amount, to the satisfaction of the learned CJM, Chamba.

21. This order, however, shall be subject to the following conditions:-

a) Applicant shall make himself available for the purpose of interrogation, if so required and regularly attend the trial Court on each and every date of hearing and if prevented by any reason to do so, seek exemption from appearance by filing the appropriate application;

b) Applicant shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;

c) Applicant shall not make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or the Police Officer, and

d) Applicant shall not leave the territory of India without the prior permission of the Court.

22. Any of the observations, made herein above, 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.

23. It is made clear that the respondent-State is at liberty to move an appropriate application, in case, any of the bail conditions is found violated by the applicant.

24. The Registry is directed to forward a soft copy of the bail order to the Superintendent of District-cum-Open Air Jail, Chamba, H.P. through e-mail, with a direction to enter the date of grant of bail in the e-prison software.

25. In case, the applicant is not released within a period of seven days from the date of grant of bail, the Superintendent of District-cum- Open Air Jail, Chamba, H.P. is directed to inform this fact to the Secretary, DLSA, Chamba. The Superintendent of the District-cum-Open Air Jail, Chamba is further directed that if the applicant fails to furnish the bail bonds, as per the order passed by this Court within a period of one month from today, then, the said fact be submitted to this Court.

26. Before parting with the order, it is high time for this Court to seek compliance of the directions, issued by this Court, vide order dated 18.12.2024, in Cr. M.P. (M) No. 2717 of 2024, titled as, 'Naresh Kumar Vs. State of H.P., by directing the Principal Secretary (Home) to the Govt. of H.P. to file an affidavit, within six week, with regard to compliance of those directions, so that the unpleasant situation, as has arisen in this case, may not happen, in any other case.

27. For that purpose, list on 30.5.2025.

(Virender Singh)
Judge

April 4, 2025

Kalpana

