

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA*****Cr.MP(M) No. 1282 of 2021******Reserved on: July 12, 2021.******Date of Decision: July 14, 2021*****Renu Devi****...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: Mr. Karan Singh Kanwar, Advocate.****For the respondent: Mr. Nand Lal Thakur, Additional Advocate General with
Mr. Ram Lal Thakur, Assistant Advocate General.****THROUGH VIDEO CONFERENCE**

FIR No.	Dated	Women Police Station	Sections
3/2021	3.1.2021	Nahan, District Sirmaur, H.P.	376, 370, 506, 511, 34 of IPC and Sections 6, 17 & 18 of the POCSO Act and Sections 3, 4 & 5 of Immoral Trafficking Act.

Anoop Chitkara, Judge

A woman aged 32 years on the allegations of indulging a minor girl into flesh trade with strangers, and now incarcerating since 3-1-2021 has come up before this Court seeking regular bail.

2. Earlier, the petitioner had filed Bail Application (Cr.MP (M) No. 517 of 2021) before this Court. The same was dismissed as withdrawn vide order dated 23.4.2021.

3. In Para 13 of the bail application, the petitioner declares having no criminal history. The status report also does not mention any criminal past of the accused.

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

4. Briefly, the allegations against the petitioner are that on 2.1.2021, Inspector In-charge, Police Station, Nahan was present in the Police Post, Gunnughat, where ASI Jai Singh produced one lady named Renu Devi and victim alongwith one mobile phone and disclosed that the phone belonged to Renu Devi which had been stolen by the victim from the house of Renu Devi at Paonta Sahib. As the mobile phone had been left in the house of someone at Ranitaal, where victim had gone for committing theft of clothes. The said mobile was deposited in Police Post, Gunnughat by someone. When Renu Devi and the victim reached the Police Post for taking the mobile, the victim revealed about the crime being committed against her by Renu Devi. The victim disclosed that the said mobile phone contained photographs of the boys who committed wrong acts with her. Thereafter, the minor victim aged 16 years was produced before the office of Child Welfare Committee for counseling and then on 3.1.2021, the victim got her statement recorded under Section 154 Cr.PC before Inspector Simple Chauhan, alleging therein that she is a resident of village Manal, Post Office Sataun, District Sirmaur, H.P. Her father is a mason. They are four sisters and she is youngest one. All her elder sisters are married. The name of her mother is Sunita who solemnized second marriage and the name of her second mother is Anita, who is having three children. It is also alleged by the victim that her second mother always scolded her, due to which, she left her house several times and came to Paonta. She had fled away from her house about one month back and remained in Gurudwara for about one month. Thereafter, she remained with her friend Pooja who took her to the house of her aunt, named Renu Devi, who has two children, one daughter Laxmi and one son Krishna. She became friend with Laxmi and continued to stay in her house. The husband of Renu and her brother-in-law (Jijaji) Mukesh worked together in one place due to which her brother-in-law Mukesh came to know about the fact that the victim is residing in their house. Renu used to compel her to do all household work and used to call boys in her house and asked her to do wrong acts with them and Renu used to charge money for the same from the boys. Thereafter, she fled away from there and started living in Gurudwara. In the meantime, petitioner, who is her brother-in-law, saw her, and took her to the house of Renu. He also tried to molest her and threatened to do wrong act with her, if she tried to flee away from house of Renu. After 4-5 days, she fled away from Renu's house with her purse and phone and came to Nahan and threw the purse after

taking money and at Nahan she stayed in Ranitaal and sometimes at Villa Road. During the night if she found any gate of any house open, she used to sleep on the roof of such house. On the basis of this statement, FIR mentioned above was registered. During investigation, the victim was medically examined, accused Renu Devi was arrested on 3.1.2021 and she was also medically examined. On 4.1.2021, as per direction of S.P., Sirmaur, one special team was constituted for the investigation of the case and Inspector Simple Chauhan was also made the member of SIT team. During interrogation of accused Renu and after verification of call detail record, three males who had paid money to Renu to have sex with the victim were arraigned as accused.

5. Mr. Karan Singh Kanwar, learned counsel for the petitioner strenuously argued that the victim had not come forward to lodge the complaint and in case she was not arrested on the allegations of theft, then probably she would not even have reported the matter to the police. His second argument is that it has come in the investigation that the victim was in habit of running away from home. Learned counsel also stated that as per the allegations, the petitioner would send the victim to different places and as such, she had all the opportunities to run away from there but she did not do so, which shows her compliance. Mr. Kanwar further argued that at the most, the petitioner had given shelter to the victim and sexual acts she was doing on her own without knowledge of the petitioner. Learned counsel largely argued that this Court has given bail to one of her customer Sahib Aftab and also to Jija of the victim namely Rakesh @ Mukesh and thus, on the grounds of parity, the petitioner who is a lady is also entitled to bail. 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 contention on behalf of the State is that the accused is a proven habitual offender, and given his past conduct; he is likely to repeat the offence. He further insists that if this Court is inclined to grant bail, then such a bond must be subject to very stringent conditions.

7. The possibility of the accused influencing the investigation, tampering with evidence, intimidating witnesses, and the likelihood of fleeing justice, can be taken care of by imposing elaborative and stringent conditions. In **Sushila Aggarwal**, (2020) 5 SCC 1, Para 92, the Constitutional Bench held that unusually, subject to the

evidence produced, the Courts can impose restrictive conditions.

REASONING:

8. To answer the first argument of the learned counsel for the petitioner that the victim on her own had not approached the police and in fact, it was the police who had arrested her in a theft case and during her interrogation, the police came to know about the aforesaid offences, it is submitted that simply because the victim was unaware or she at that point of time did not choose to inform the police would not make out a case for bail to the petitioner on this ground.

9. As far as the next argument of the learned counsel for the petitioner that the victim was in habit of running away from her home is concerned, the victim in her statement had clearly stated that her mother had married someone else and even her father had married another lady. She also stated that her second mother would scold her and for that reason she left the house on several occasions. She further admitted that she had even stayed in Gurudwara. The reasons for the victim to run away from her home were very tragic. There was none to take care of her. The society as well as the State failed to take responsibilities in such type of cases. The petitioner after interacting with the victim realized that she is vulnerable and took advantage of her and allegedly forced her to do sex for money. Thus this is not at all a ground for bail.

10. The third argument of learned counsel for the petitioner that once the victim had gone out of home to sleep with persons then she had ample opportunities to run away is just illusionary because the victim had nowhere to go. She had run away from her home because of her plight and as such, she had practically surrendered to her destiny. Neither the State nor the society improved. Thus, this is also not a ground for bail.

11. Prima facie the allegations point out towards the petitioner, who is the main accused. She acted like a pimp and such type of persons are not entitled to any bail.

12. Last argument of Mr. Chandel is that this Court had given bail to two co-accused and as such the petitioner is also entitled to bail simply on the ground of parity. In this regard, it is submitted that bail was given to co-accused Sahib Aftab in Cr.MP(M) No.846 of 2021 because he was a boy of 18/19 years and was probably not aware about the age of the victim. While giving bail to him, this Court had given the following reasoning:

“8. The victim had not approached the Police for sexual

assaults, and upon her arrest for theft of a mobile, she had revealed her tragic ordeal. The Police did a commendable job in initiating an investigation and launching prosecution. However, the Investigator did not ask for a test identification parade. The accused have been involved through the call details. However, such call details infer that the victim was continuously taking his calls and talking to him. The victim alleged sexual acts by many people, and despite that, only three of such customers were arrested. One of the accused was a juvenile and was granted bail. The other two are Salman Khan, aged 20 years, and Sahib Aftab aged 18/19 years. There is a lot to read between the lines, and prima facie points towards a bias to pick and choose to trace and arrest the persons who had coitus with the minor victim.

9. The primary factor for bail is the very young age of the accused. Under no circumstances, the conduct of the petitioner is condonable or forgivable if proven to be true. However, a limited question before this Court is to grant or bail or not. These observations nowhere suggest his innocence or lesser role. The period of incarceration already undergone would also be an additional factor for the grant of bail. Therefore, the nature of the evidence against the petitioner and the cumulative effect of all the elements would certainly make out a case for bail at this stage. Thus, in the facts and circumstances peculiar to this case and without commenting on the merits, the present bail application is allowed.”

13. While giving bail to another co-accused, i.e., jija of the victim Shri Rakesh @ Mukesh in Cr.PM(M) No.1151 of 2021, this Court had given the following reasoning:-

“8. The victim had not approached the Police for sexual assaults, and upon her arrest for theft of a mobile, she had revealed her tragic ordeal. The allegations against the petitioner are that the petitioner, who is Jeeja of the victim (Sister’s husband), noticed the victim in a Gurdwara and brought her to Renu, where he tried to

commit rape upon her and warned her that in case she again tries to run away, then he would rape her. Thus, the allegations against the petitioner are two-fold. Firstly, he tried to rape her and secondly, he warned her that if she again runs away from Renu's home, he would rape her. None of her statements mentioned that she had told the petitioner that Renu is forcing her to do paid sex. The victim states that Renu would make her do household chores. It would be unsafe to assume that the petitioner was aware that Renu was forcing the victim to do sex with customers. Had the victim stated that she had revealed her ordeal to her Jeeja (Petitioner) and after that, he had forced her to stay with Renu, it would have brought him in the category of the main accused. But, in the absence of any complaint that she had told her Jeeja that Renu was using her in flesh trade, it would be an entirely different situation. All this assumes significance because, as per the victim's version, she had run away from her home even earlier and stayed at Gurudwara of Paonta Sahib. Why the petitioner did not offer her to stay with him is apparent that the victim alleges molestation. Regarding the attempt to rape, and the threat of rape, the petitioner has already remained behind bars for around six months. Under no circumstances, the conduct of the petitioner is condonable or forgivable if proven to be true. However, a limited question before this Court is to grant bail or not. These observations nowhere suggest his innocence or condone his conduct. The period of incarceration of around six months already undergone, in the light of the cumulative allegations, specifically that he did not commit any sexual intercourse with her and prima facie it shall be unsafe to presume that he was aware that Renu was forcing the victim to do sex for money, is the main factor for the grant of bail. Therefore, the nature of the evidence against the petitioner and the cumulative effect of all the elements would certainly make out a case for bail at this stage. Thus, in the facts and circumstances peculiar to this case and without commenting on the merits, the present bail application is allowed.

9. Given the above reasoning, the Court is granting bail to the

petitioner, subject to strict terms and conditions, which shall be over and above and irrespective of the contents of the form of bail bonds in chapter XXXIII of CrPC, 1973.”

14. A perusal of the above clearly mentions that the bail in both the above bail petitions was granted on the facts and circumstances peculiar to the petitioner(s) and it was not a ground of parity. Thus the present petitioner, who is a pimp, cannot claim bail on the ground of parity and the argument of learned counsel for grant of bail to the present petitioner on the ground of parity is strongly rejected.

15. Given above, the petition is dismissed with liberty to file a new bail application more particularly after the statement of victim is recorded.

**(Anoop Chitkara)
Judge**

July 14, 2021
(Mamta)

High Court