

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

**Cr.M.P.(M) No. 471/2014
alongwith Cr.M.P.(M) Nos.497
and 498 of 2014
Decided on:29.4.2014**

1. Cr.M.P.(M) No.471/2014

Sumesh Kapila. ...Petitioner.

Versus

State of Himachal Pradesh. ...Respondent.

2. Cr.M.P.(M) No.497/2014

Sudarshna. ...Petitioner.

Versus

State of Himachal Pradesh. ...Respondent.

3. Cr.M.P.(M) No.498/2014

Suresh Kapila. ...Petitioner.

Versus

State of Himachal Pradesh. ...Respondent.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ No

For the Petitioners : Mr. Ashok Sharma, Advocate.

For the Respondent: Mr. Neeraj K. Sharma, Dy. A.G.

Justice Rajiv Sharma, Judge (oral).

Since all the petitions have arisen out of same F.I.R.,
the same were taken up together for hearing and are being
disposed of by a common judgment.

¹ Whether reporters of the local papers may be allowed to see the judgment? no

2. Present petitions have been filed under section 438 of the Code of Criminal Procedure in case FIR No.91/2014 dated 15.4.2014 for offences punishable under sections 376 and 120-B of the Indian Penal Code registered at Police Station, Nurpur, District Kangra, H.P.

3. Status report has been filed. The same is perused.

4. According to the averments contained in the police report, Sh. Kuldeep Chand has made statement under section 154 of the Code of Criminal Procedure to ASI Surjeet Singh, I/C P.P. Rahan. According to him, he has retired from B.S.F. He has three daughters and one son. One daughter is married. On 13.4.2014, they were sleeping in their house after locking the door. Dogs started barking. The prosecutrix told him to shoo away the dogs. She asked for keys. He handed over keys to her. He was heart patient. He had taken some medicine. She opened the lock and shooed away the dogs. He got up after five minutes. He saw that prosecutrix was not on her bed. He called her. There was no response. He noticed that bolt of main door was locked. Her brother found that prosecutrix was not traceable. In the morning report was lodged.

5. According to the family members of the prosecutrix, accused have taken away the prosecutrix and

thereafter petitioner Sumesh Kapila has committed rape on her. The prosecutrix was medically examined on 14.4.2014. Petitioner Sumesh Kapila was also medically examined. The date of birth of the prosecutrix is 1.1.1995. Her statement was recorded under section 164 of the Code of Criminal Procedure in the Court of Judicial Magistrate 1st Class, Nupur. According to her statement, on 13.4.2014, she had come out to shoo away the dogs and use the wash room. At that time, petitioners Sumesh Kapila, Sudershna and Suresh Kapila took her on the roof of their house. They administered some tablets to her and proclaimed that she would die in the morning and they would throw her away.

6. The prosecutrix's age was more than 18 years on 13.4.2014. Version of the prosecutrix does not inspire any confidence. Her brother and father were sleeping in the same house. The house was locked. The prosecutrix had asked for the keys since dogs were barking outside. When the father and brother were present in the house, it was not expected from the prosecutrix to go out at night to shoo away the dogs. The police has given the version that her father was heart patient and had taken medicine. It is not believable that father of prosecutrix got up after 5 minutes. According to the doctor, who has medically examined the prosecutrix, accused has done sexual

intercourse 50-60 times before 13.4.2014. The prosecutrix in her statement recorded under section 164 of the Code of Criminal Procedure has stated that Sumesh Kapila has committed rape on her about 25-30 times. The prosecutrix is major. It is not believable that a major girl would not bring it to the notice of her parents if she had been sexually exploited repeatedly by Sumesh Kapila, particularly when the accused is son of prosecutrix's uncle. It is not accepted in Indian society that parents would be party to such alleged heinous crime. She had gone out at night. It is not believable that accused were waiting for her outside. It is also not believable that parents of petitioner Sumesh Kapila would have left him and prosecutrix on the roof. According to the averments made in the petition, there is a civil dispute going on between the parties. The father of petitioner Sumesh Kapila had filed a civil suit against the father of prosecutrix. The litigation came upto this Court by way of RSA No.628/2012, which is pending adjudication. Besides this, another R.S.A. No. 595/2012 is also pending adjudication. The family of the prosecutrix has also filed case of the criminal breach against the petitioners.

7. Consequently, present petitions are allowed. It is ordered that in the event of arrest of the petitioners in connection with FIR No. 91/2014 dated 15.4.2014, Police

Station, Nurpur, District Kangra, they shall be released on bail, subject to their furnishing personal bond in the sum of ` 25,000/- each with one surety in the like amount to the satisfaction of the arresting Police Officer/I.O., and shall further abide by the following conditions:-

1. Petitioners shall make themselves available for interrogation as and when required and shall cooperate with the investigating Officer to conduct the investigation in a manner so as to take it to its logical end;
2. Petitioners shall not tamper with the prosecution evidence nor hamper the investigation of the case in any manner whatsoever;
3. Petitioners shall not make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the court or the police officer; and
4. Petitioners shall not leave the territory of India without the prior permission of the court.

8. It is clarified that if the petitioners misuse their liberty or violate any of the conditions imposed upon them, the investigating agency shall be free to move this court for cancellation of the bail.

9. The observations made hereinabove shall remain confined to the disposal of these petitions and shall have no bearing on the merits of the case. All the petitions stand disposed of. Copy *Dasti*.

**(Justice Rajiv Sharma),
Judge.**

29.4.2014 *awasthi*