

ABC 2020 (I) 152 HP
ACQUITTAL & BAIL CASES
HIGH COURT OF HIMACHAL PRADESH

(Anoop Chitkara, J.)

Cr Mp(M) No 1863 of 2019

Decided on 06 November, 2019

GAURAV ARORA

- *Petitioner(s)*.

Versus

STATE OF HIMACHAL PRADESH

- *Respondent(s)*.

Law Covered:- Code of Criminal Procedure, 1973 – Section 439 – Regular Bail – Immoral Traffic (Prevention) Act, 1956 – Sections 3 & 4 – Using premises as brothel – Allegation that petitioner was running his resort mainly as a brothel – Held, if a hotel is being used in violation of the terms and conditions, for which licence was granted, it is for the State to look into the said fact – judicial incarceration is not required – The investigation in progress & soon Challan shall be filed in Court – no previous criminal history – Bail granted. (Para 4)

Law of relief:- Allegation of running a hotel as a brothel cannot be a ground to refuse bail.

Held:- I have heard Mr. Lovneesh Thakur, learned Advocate, for the petitioner and Mr. Nand Lal Thakur, learned Additional Advocate General for the respondent/State.

REASONING:

(a) On the face of the FIR, the victim was taken for medical examination in Dr. Yashwant Singh Parmar Medical College, Nahan, on 23.9.2019. In the police file, the report of Dr. Rishbha, is annexed which states that the victim refused to undergo any physical or medical examination. The doctor also took signatures and thumb impression from other persons to corroborate this fact, one of whom, was elder sister of the victim.

(b) As far as the present petitioner is concerned, according to the Investigating Officer, he is running this resort mainly as a brothel and has allowed the premises to be used as such. The allegations against him is that he is making the sex workers solicit their customers in this property. If a hotel is

a being used in violation of the terms and conditions, for which
 licence was granted, it is for the State to look into the said fact,
 but for the purpose of present case, judicial incarceration is not
 required. Even if, this person is not released on bail, still there
 will be lot of other persons who would substitute Gaurav Arora
 and hotel Kala Amb Resort may continue to work as a brothel.
 b Therefore, the remedy lies with the State to take appropriate
 action against such Resort, if they think it fit in their wisdom.

c (c) Whatever is the ultimate outcome of the allegations
 cannot be commented at this stage. There is no provision in
 the Indian Penal Code, 1860 or Code of Criminal Procedure,
 1973, which creates a total bar for grant of bail.

(d) The investigation in the case is in progress and
 soon Challan shall be filed in Court.

d (e) In the status report, there is no mention of previous
 criminal history of the bail petitioner.

(f) The petitioner is a permanent resident of address
 mentioned in the memo of parties. Therefore, his presence can
 always be secured.

e (g) I am satisfied that no purpose will be served if the
 bail petitioner is continued in judicial custody.

(h) I am of the considered view that, *prima facie*,
 petitioner has made out a case for grant of bail. (Para-4)

f **Counsel:-** For Petitioner(s): Mr. Lovneesh Thakur, Adv.
 For Respondent(s): Mr. Nand Lal Thakur, Adv.

JUDGMENT

g **ANOOP CHITKARA, J.:** - 1. The petitioner, who is under arrest, on
 being arraigned as an accused in FIR number 178/2019 dated 23.9.2019,
 registered under Section 370 of the Indian Penal Code, 1860 and
 Sections 3 and 4 of the Immoral Traffic (Prevention) Act, 1956 (PITA
 Act), in the file of Police Station, Kala Amb, District Sirmaur, H.P.,
 h disclosing non-bailable offences, has come up before this Court under
 Section 439 of the Code of Criminal Procedure, seeking regular bail.

2. The status report stands filed. I have seen the status report(s)
 as well as the police file, to the extent it was necessary for deciding the
 present petition and the same stands returned to the police official.

FACTS:

3. The gist of the First Information Report and the investigation is as follows: **a**

a) The victim who is the married lady, aged about 26 years, on 23.9.2019, on telephone No.112 i.e. National Distress Number, made a call that some persons, are attempting to commit rape upon her, in a hotel "Kala Amb Resort". On the receipt of this information, police party rushed towards the Kala Amb Resort and recovered the victim. Subsequently, the Investigating Officer recorded her statement under Section 154 of the Code of Criminal Procedure, wherein she stated that she hails from Nepal and was married to one Tarun Garg and she has a nine years old son from that wedlock. **b**
c

b) She further stated that she is now residing separately from her husband in a rented accommodation and works in a saloon in Panchkula. A few days before, a person named Ishu met her and on 21.9.2019, she spoke to said Ishu. He asked her to reach at Kala Amb Resort at District Sirmour, H.P. and told her to solicit customers there. On reaching there, she was made to stay at room No.201 and there she received the phone call of said Ishu, who was working as a pimp, asked her to take Rs.2,000/- per head and he would have a commission of 500/- each. After that, a man, named Kirti Kumar came there and he indulged in sexual intercourse with her. She further stated that after indulging in sex with Ishu, she was supposed to serve the other clients but before that Ishu abused and slapped her. He did not pay her money. The names of other two persons were known as Vishant and Ranjeet. On the basis of this information, FIR as mentioned above was registered. The Investigating Officer took the victim for medical examination in Dr. Yashwant Singh Parmar Medical College, Nahan. Her statement was recorded under Section 154 of the Code of Criminal Procedure. The police arrested the petitioner alongwith other accused in this FIR. **d**
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4. I have heard Mr. Lovneesh Thakur, learned Advocate, for the petitioner and Mr. Nand Lal Thakur, learned Additional Advocate General for the respondent/State.

REASONING:

a (a) On the face of the FIR, the victim was taken for
medical examination in Dr. Yashwant Singh Parmar Medical
College, Nahan, on 23.9.2019. In the police file, the report of Dr.
Rishbha, is annexed which states that the victim refused to
b undergo any physical or medical examination. The doctor also
took signatures and thumb impression from other persons to
corroborate this fact, one of whom, was elder sister of the victim.

c (b) As far as the present petitioner is concerned,
according to the Investigating Officer, he is running this
resort mainly as a brothel and has allowed the premises to be
used as such. The allegations against him is that he is making
the sex workers solicit their customers in this property. If a
d hotel is being used in violation of the terms and conditions,
for which licence was granted, it is for the State to look into
the said fact, but for the purpose of present case, judicial
incarceration is not required. Even if, this person is not
e released on bail, still there will be lot of other persons who
would substitute Gaurav Arora and hotel Kala Amb Resort
may continue to work as a brothel. Therefore, the remedy lies
with the State to take appropriate action against such Resort,
if they think it fit in their wisdom.

f (c) Whatever is the ultimate outcome of the allegations
cannot be commented at this stage. There is no provision in
the Indian Penal Code, 1860 or Code of Criminal Procedure,
1973, which creates a total bar for grant of bail.

(d) The investigation in the case is in progress and
soon Challan shall be filed in Court.

g (e) In the status report, there is no mention of previous
criminal history of the bail petitioner.

h (f) The petitioner is a permanent resident of address
mentioned in the memo of parties. Therefore, his presence can
always be secured.

(g) I am satisfied that no purpose will be served if the
bail petitioner is continued in judicial custody.

(h) I am of the considered view that, *prima facie*,
petitioner has made out a case for grant of bail.

5. In the result, the present petition is allowed. The petitioner shall be released on bail in the present case, in connection with the FIR mentioned above, on his furnishing personal bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court or the Court exercising jurisdiction over the concerned Police Station where FIR is registered. The learned counsel for the accused as well as the attesting person shall explain the conditions of this bail to the petitioner.

6. This Court is granting the bail subject to the conditions mentioned in this order. The petitioner undertakes to comply with all the directions given in this order and the furnishing of bail bonds by the petitioner in acceptance of all such conditions:

a) The petitioner is directed to join the investigation as and when called by the investigating office and the petitioner undertakes to appear before the investigating officer as and when directed to do so. However, whenever the investigation takes place within the boundaries of the Police Station or the Police Post, then the accused shall not be called before 9 a.m. and shall be let off before 5 p.m.

b) The petitioner shall co-operate in the investigation.

c) The petitioner shall not hamper the investigation.

d) The petitioner undertakes not to contact the complainant and witnesses, to threaten or browbeat them or to use any pressure tactics.

e) The petitioner shall neither influence nor try to control the investigating officer, in any manner whatsoever.

f) The petitioner undertakes not to make any inducement threat or promise, directly or indirectly, to the investigating officer or any person acquainted with the facts of the case to dissuade him from disclosing such facts to the Court or any Police Officer or tamper with the evidence.

g) In case of the launching of the prosecution, the petitioner undertakes to attend the trial and to appear before the Court which issues the summons or warrants and shall furnish fresh bail bonds to the satisfaction of such Court.

h) In case, the petitioner is arraigned as an accused of the commission of any offence under Section 370 of the Indian Penal Code and Sections 3 and 4 of the Immoral Traffic (Prevention) Act then within thirty days of knowledge of such FIR, then State shall be at liberty to apply to this Court, for cancellation of this bail, if it deems fit and proper.

a i) The petitioner shall either sell or deposit all the fire arms alongwith ammution and arms licences, if taken, before the concerned authorities within 30 days from today.

b 7. It is clarified that the present bail order is only with respect to the above mentioned FIR. It shall not be construed to be a blanket order of bail in all other cases, if any, registered against the Petitioner.

8. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

c Petition stands allowed in the aforesaid terms.

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Result:- Bail granted.

d ABC 2020 (I) 157 J&K
ACQUITTAL & BAIL CASES
HIGH COURT OF JAMMU & KASHMIR
(Tashi Rabstan, J.)
Crl R No.67/2019
e Decided on 19 December, 2019

OM PARKASH

- Appellant(s).

Versus

f STATE THRO. INCHARGE POLICE STATION, DOMANA, JAMMU - Respondent(s).

g **Law Covered:-** (A) Ranbir Penal Code, 1860 – Sections 376 & 452 – Rape case – Bail – Investigation completed – challan presented – charges framed – no allegation against the petitioner-accused with regard to influencing prosecution or attempting to tamper with prosecution evidence – Interim bail granted. (Para 17)

h (B) Criminal Jurisprudence – Bail Application – Consideration of – Requirements to be considered – Prima-facie involvement of a particular accused connecting him with the commission of alleged offence & its gravity or seriousness – Chances of tampering with evidence can also be a very valid ground for rejecting or accepting the Bail Application – Duty of the Court – there should not be any hindrance in free, fair & just trial. (Para 13)

(C) Criminal Jurisprudence – Bail Application – Consideration of – Principles for – (i) seriousness of the allegations – severity of