

THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) Nos. 1808 to 1811 of 2020

Decided on: 27.10.2020

Cr.M.P(M) No. 1808 of 2020

Abhishek ManglaPetitioner

Versus

State of H.P.Respondent

Cr.M.P(M) No. 1809 of 2020

Meenal ManglaPetitioner

Versus

State of H.P.Respondent

Cr.M.P(M) No. 1810 of 2020

Shirli ManglaPetitioner

Versus

State of H.P.Respondent

Cr.M.P(M) No. 1811 of 2020

Pat Ram ManglaPetitioner

Versus

State of H.P.Respondent

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The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes.

For the petitioners: Mr. O.C. Sharma, Advocate through video conferencing.

For the respondent: Mr. Raju Ram Rahi, Dy. A.G. through video conferencing.

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

Vivek Singh Thakur, J. (Oral)

These four petitions preferred under Section 438 Cr.P.C are being disposed of by this common order as common status report filed on behalf of respondent-State is to be considered on the basis of common facts and circumstances.

2. Petitioner Abhishek Mangla is husband of complainant, whereas, Pat Ram Mangla, Shirli Mangla and Meenal Mangla are father, mother and sister of Abhishek Mangla.

3. Common status report filed on behalf of respondent-State has been taken on record, wherein contents of complaint submitted by the victim, on the basis of which FIR No. 41/2020 dated 5.10.2020 has been registered against the petitioners under Sections 498A, 504, 34 IPC and Sections 66(E) and 67 of the IT Act in Women Police Station, Mandi, District Mandi, has been reproduced.

4. According to the victim, after one month of solemnization of marriage with Abhishek Mangla, the petitioners had started harassing her on one or other pretext particularly for insufficient dowry. It is also case of the victim that there was some criminal case registered against the petitioners in which they were trying to get anticipatory bail and the father of the complainant had helped them in engaging an Advocate at Chandigarh but after getting bail, allegations were leveled by her father-in-law that the father of the complainant would have shared their money from the Advocate engaged by them and other incidents, which are not being reproduced here in detail, have also been stated in the complaint with respect to beatings, harassing and preventing from making calls to her parents and sisters.

It is complained that even the calls of the complainant were being recorded by her husband. Being tired of atrocities of her in-laws, complainant had called her father and had come to her parental house at Mandi along-with him and at that time, after about 1½ months, her husband had come to Mandi and apologized for his conduct and swore for not to repeat that whereupon complainant had agreed to accompany him with the consent of her father believing that he will not beat her. But immediately after reaching at home, he had again threatened her to teach a lesson to her father and thereafter again had started harassing and beating her and abusing her sister and parents.

5. It is also stated in the complaint that once, during night, Abhishek Mangla had snapped her nude photographs on his mobile and on refusal to allow that, he had expressed his anger whereupon victim had acceded to his request and out of fear, she had not raised any voice against him. On asking for reason to take such photographs, the husband of the complainant, at that time, had replied that he had done so causelessly/without any reason ('yoooh hee'). However, thereafter her husband had uploaded her nude photographs on the internet for sometime and had removed after some time.

6. It is further case of the complainant that in September, 2020, husband of the complainant had dictated her to ask her father to provide scooty to him, failing which, he had threatened to post all nude posts on internet along-with name, address and mobile number of her father and when she requested to delete those nude photographs from his mobile then he had slapped her. At that time out of fear she had even urinated in her clothes and suffered fever also. When she narrated this incident to her father-in-law and mother-

in-law, they had also justified the demand of their son and her sister-in-law had commented that that it would not be easy to have scooter from the parents of the victim.

7. Not only this the husband of the victim had also uploaded nude photographs of the victim on facebook through fake facebook ID created by him in the name of victim and had also uploaded nude photographs of the victim as profile picture of that facebook ID and after taking screen shots thereof had sent photographs to the victim and had also uploaded videos and photographs wherein victim was nude. During investigation, 16 such screen shots have been produced before the police which were uploaded by the husband of the victim.

8. The petitioners have approached this Court for anticipatory bail. They have been enlarged on anticipatory bail on 9th October, 2020 with a direction to join the investigation. As per status report filed, they have joined the investigation and petitioner Abhishek Mangla has also produced his mobile and sim purported to be used by him. Learned counsel for petitioners submits that petitioners are ready to abide by any further condition imposed by Court for confirmation of their bail and they are also in a position and read to furnish local surety. Further that offence under Information and Technology Act (IT Act) is not non-bailable and for other alleged offences, petitioners deserve to be enlarged on bail.

9. The offence under Sections 66(E) and 67 of the IT Act may be bailable offence, however, offence under Section 498A IPC is a non-bailable offence.

10. So far as the petitioners Pat Ram Mangla, Shirli Mangla and Meenal Mangla (Cr.M.P(M) Nos. 1809, 1810 and 1811 of 2020) are

concerned, considering their role as indicated in status report and as alleged in the complaint, they are enlarged on bail subject to furnishing fresh bail bonds in the sum of ₹50,000/- each with one local surety each, as undertaken, in the like amount to the satisfaction of the Chief Judicial Magistrate, Mandi and also subject to the following conditions:-

- i) That the petitioners shall make themselves available to the police or any other Investigating Agency or Court in the present case as and when required;
- ii) that the petitioners shall not directly or indirectly 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 Court or to any Police Officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;
- iii) that they shall not obstruct the smooth progress of the investigation/trial;
- iv) that the petitioners shall not commit the offence similar to the offence to which they are accused or suspected;
- v) that the petitioners shall not misuse their liberty in any manner;
- vi) that the petitioners shall not jump over the bail;
- vii) that they shall furnish proof of their place of ordinary residence like certificate of Panchayat or any other authority which may be placed where his mother, brother or wife are residing and he shall keep on informing about the change in address, landline number and/or mobile number, if any, for their availability to Police and/or during trial; and
- viii) they shall not leave India without permission of the Court.

ix) They shall not involve in commission of same and similar offence and in such eventuality, bail in present case shall also be liable to be cancelled.

11. It will be open to the prosecution to apply for imposing and/or to the trial Court to impose any other condition on the petitioners as deemed necessary in the facts and circumstances of the case and in the interest of justice.

12. In case the aforesaid petitioners violate any conditions imposed upon them, their bail shall be liable to be cancelled. In such eventuality prosecution may approach the competent Court of law for cancellation of bail, in accordance with law.

13. Learned trial Court is directed to comply with the directions issued by the High Court, vide communication No. HHC.VIG./Misc. Instructions/93-IV.7139 dated 18.03.2013.

14. Observations made in these petitions hereinbefore shall not affect the merits of the case in any manner and are strictly confined for the disposal of these bail applications.

15. The petitioners are permitted to produce copy of order downloaded from the High Court website and the trial Court shall not insist for certified copy of the order, however, he may verify the order from the High Court website or otherwise.

16. Relationship of husband and wife is a privileged relation. Institution of marriage inspires trust and confidence which leads to complete surrender of spouses to each other. This relation of mutual trust, faith and confidence creates sense of security and sometimes even more than parents and children. Sometime spouse feels more

secured in shelter of life partner than mother's lap. Such feeling inspires openness between husband and wife.

17. Posting and uploading nude photographs of spouse, particularly of wife, in public domain amounts to betray the mutual trust and confidence which marital relations implies. It is stripping off a woman in public by the husband himself who is not only supposed but duly bound to protect her, it is not only serious but a heinous crime. It's impact on soul, mind and health of the victim is beyond imagination. It causes suffering to her beyond comprehension, attracting the provision of Section 498-A IPC. An act amounting to stripping off a woman in public, in my considered view dis-entitles a person from anticipatory bail.

18. I am of the considered view that extraordinary provision of Section 438 Cr.P.C, conferring discretion upon the Court to direct enlargement of a person on bail before his arrest, in the event of his arrest, is not framed to benefit such offenders particularly a husband who is accused of an offence amounting to stripping off his wife in public. Therefore, considering the given facts and circumstances of the case, nature and gravity of the accusations and impact thereof on the soul, mind and body of a woman, affecting her mental and physical health beyond comprehension, I do not find it fit to enlarge petitioner Abhishek Mangla on bail, exercising the power under Section 438 Cr.P.C. Hence, bail petition [Cr.M.P(M) No. 1808 of 2020] preferred by him is dismissed. Needless to say that he would not be entitled to any further protection of interim bail granted vide order dated 9.10.2020 in his favour.

19. Accordingly, Cr.M.P(M) Nos. 1809, 1810 and 1811 of 2020 are allowed and Cr.M.P(M) No. 1808 of 2020 is dismissed in aforesaid terms.

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October 27, 2020
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(Vivek Singh Thakur)
Judge

High Court of H.P.