

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****Cr.MP No.2263 of 2024 in  
Cr. Appeal No.291 of 2024****Reserved on : 24.10.2024.****Date of Decision: 29.10.2024**

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Devinder Kumar

....Applicant-Appellant

Versus

State of Himachal Pradesh

...Respondent

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*Coram*

**Hon'ble Mr. Justice Sushil Kukreja, Judge**

Whether approved for reporting?<sup>1</sup>

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For the applicant-appellant: Mr. N.S. Chandel, Senior  
Advocate with Mr. Vinod K.  
Gupta, Advocate.

For the respondent : Mr. Navlesh Verma, Additional  
Advocate General with Mr. Raj  
Negi and Ms. Niyati Thakur,  
Deputy Advocates General.

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**Sushil Kukreja, Judge** (Oral)

This order shall dispose of an application filed by the applicant-appellant under Section 389 of the Code of Criminal Procedure (Cr.PC) seeking suspension of sentence awarded by learned Sessions Judge, Mandi, Division Mandi,

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<sup>1</sup> ? Whether reporters of Local Papers may be allowed to see the judgment?

H.P., vide judgment of conviction dated 29.04.2024 and order of sentence dated 08.05.2024 in Sessions Trial No. 43 of 2023 (2017) for the commission of offences punishable under Sections 458, 323, 376 and 506 of the Indian Penal Code (IPC).

2. In reply filed to the application, the respondent/ State averred that the applicant does not have good arguable case in his favour and he is not entitled to be released on bail during the pendency of the appeal as he has been proved guilty of committing a heinous crime after a full-fledged trial, therefore, he cannot be allowed to roam free in public.

3. Learned counsel for the applicant-appellant contended that it was a case of consensual act between the applicant and the prosecutrix as they had acquaintance with each other and the prosecutrix had been asking him to meet her and when they were caught red handed by the husband of the prosecutrix, the applicant/appellant was implicated in a false case. He also pointed out various contradictions in the statements of prosecution witnesses.

4. I have heard learned Senior Counsel for the applicant/appellant as well as learned Additional Advocate

General and have also gone through the material available on record.

5. The prosecutrix (PW-1), in her statement, deposed that on 24.11.2016 at about 10:00 am, when she was sewing clothes in her room and her son and niece were sleeping there, the applicant-accused suddenly entered into the room, caught hold of her and committed rape upon her and in the meantime, her husband also came there and knocked at the door of the room. She got freed from the accused and opened the door from inside and thereafter some beatings took place between the accused and her husband and thereafter the accused had fled away from the room. However, during her cross-examination, she admitted that on 24.11.2016 in the night, her in-laws, brother-in-law and their families were in the same house and there were 4-5 houses near her matrimonial house. She also admitted that she had a mobile phone with her on 24.11.2016. She admitted that she did not make any attempt to run away/hit the accused when he was trying to rape her. She further admitted that upto 05.09.2018, she was making phone calls and sending SMS messages to the accused. She also admitted that after registration of the case, she had

compromised the matter with the accused before the Gram Panchayat, where she admitted that the accused had not committed any forcible sexual intercourse with her on 24.11.2016.

6. PW-4 Medical Officer, who conducted the medical examination of the prosecutrix, admitted in her cross-examination that she had not noticed any scratch marks/any resistance mark or any other marks upon the body of the prosecutrix..

7. Though it would be inappropriate to discuss the evidence at this stage, however, in view of the entire evidence on record, particularly the deposition of the prosecutrix and the statement of the doctor who conducted her medical examination which have been considered *prima facie* for the purpose of adjudicating the instant application, the applicant/appellant has made out a case for suspension of sentence imposed upon him. Hence, it is ordered that the substantive sentence imposed upon the applicant, vide judgment of conviction dated 29.04.2024 and order of sentence dated 08.05.2024, passed by learned Sessions Judge, Mandi, Division Mandi, H.P., shall remain suspended,

